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Rules and Regulations

Federal Register
Vol. 68, No. 232
Wednesday, December 3, 2003

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–52–AD; Amendment 39–13381; AD 2003–24–12]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D–3A, –7, –7A, –7F, –7H, –7AH, and –7J Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7F, –7H, –7AH, and –7J turbofan engines, with gearbox pressure tube, part number (P/N) 697896, and No. 4 bearing front pressure manifold, P/N 670663, installed. This AD requires a one-time visual inspection of the gearbox pressure tube and No. 4 bearing front pressure manifold and the attaching clamp assemblies for correct positioning and for wear and damage, and replacement if necessary. This AD is prompted by a report of a failed gearbox pressure tube that resulted in an engine fire. We are issuing this AD to prevent engine fires caused by failed gearbox pressure tubes or failed No. 4 bearing front pressure manifolds.

DATES: This AD becomes effective December 18, 2003.

We must receive any comments on this AD by February 2, 2004.

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

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–52–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

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

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; telephone (781) 238–7189; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: In June of 2003, we became aware that a PW JT9D–7 series turbofan engine gearbox pressure tube failed and caused an engine fire. Investigation revealed that several clamp assemblies that secure the No. 4 bearing front pressure manifold were broken, including some that were missing clamp rubber cushions. Without the clamp rubber cushions, the No. 4 bearing front pressure manifold moved freely due to engine vibration, causing the gearbox pressure tube to fracture, and caused an oil-fed engine fire. A similar failure was reported in 1996, but did not result in a fire.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other PW JT9D–3A, –7, –7A, –7F, –7H, –7AH, and –7J turbofan engines of the same type design. We are issuing this AD to prevent an engine fire caused by a failed gearbox pressure tube. This AD requires a one-time visual inspection of the gearbox pressure tube, P/N 697896, the No. 4 bearing front pressure manifold, P/N 670663, and the attaching clamp assemblies, P/Ns ST1594–06, ST1594–08, and ST1594–10, for correct positioning, for wear and damage, and replacement if necessary.

FAA's Determination of the Effective Date

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

Changes to 14 CFR Part 39—Effect on the AD

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–52–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You 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 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–52–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–24–12 **Pratt & Whitney:** Amendment 39–13381. Docket No. 2003–NE–52–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 18, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT9D–3A –7, –7A, –7F, –7H, –7AH, and –7J turbofan engines, with gearbox pressure tube, part number (P/N) 697896, and No. 4 bearing front pressure manifold, P/N 670663, installed. These engines are installed on, but not limited to, Boeing 747–100, –200B, –200C, and –200F airplanes.

Unsafe Condition

(d) This AD is prompted by a report of a failed gearbox pressure tube that resulted in an engine fire. We are issuing this AD to prevent engine fires caused by failed gearbox pressure tubes or failed No. 4 bearing front pressure manifolds.

Compliance

(e) You are responsible for having the actions required by this AD performed within 250 hours-in-service or at the next shop visit, whichever occurs first, after the effective date of this AD, unless the actions have already been done.

One-Time Visual Inspection of Clamp Assemblies

(f) Visually inspect the clamp assemblies, P/Ns ST1594–06, ST1594–08, and ST1594–10, that attach the gearbox pressure tube and the No. 4 bearing front pressure manifold to the engine. Replace clamp assemblies before further flight that are rejected by any of the following rejection criteria:

(1) Droop in the No. 4 bearing front pressure manifold.

(2) Cracks, wear, or distortion in clamp metal.

(3) Clamp cushions that are worn, compacted, cracked, coming apart in chunks, deteriorated, or missing. A reddish powder found around the clamp is an indication of deterioration.

One-Time Visual Inspection of Gearbox Pressure Tube and No. 4 Bearing Front Pressure Manifold

(g) Clean any debris and oil from the outer surface of the gearbox pressure tube and No. 4 bearing front pressure manifold and visually inspect the tube and manifold. Repair or replace the affected tube or manifold before further flight if it is rejected by any of the following rejection criteria:

(1) Nicks, chafing, scratches, and or pitting 0.003 inch or greater in depth.

(2) Dents within 0.25 inch of the ferrules or will not permit free passage of a ball having a diameter slightly greater than 80% of the tube or manifold tubing inner diameter.

(3) Corrosion that is unable to be removed by a light polishing.

(4) Tube or manifold is leaking oil.

Gearbox Pressure Tube, No. 4 Bearing Front Pressure Manifold, and Clamp Assembly Positioning

(h) If the gearbox pressure tube, No. 4 bearing front pressure manifold, or clamp assemblies are not properly positioned, then correctly position them before further flight, as shown in the following Figure 1 of this AD.

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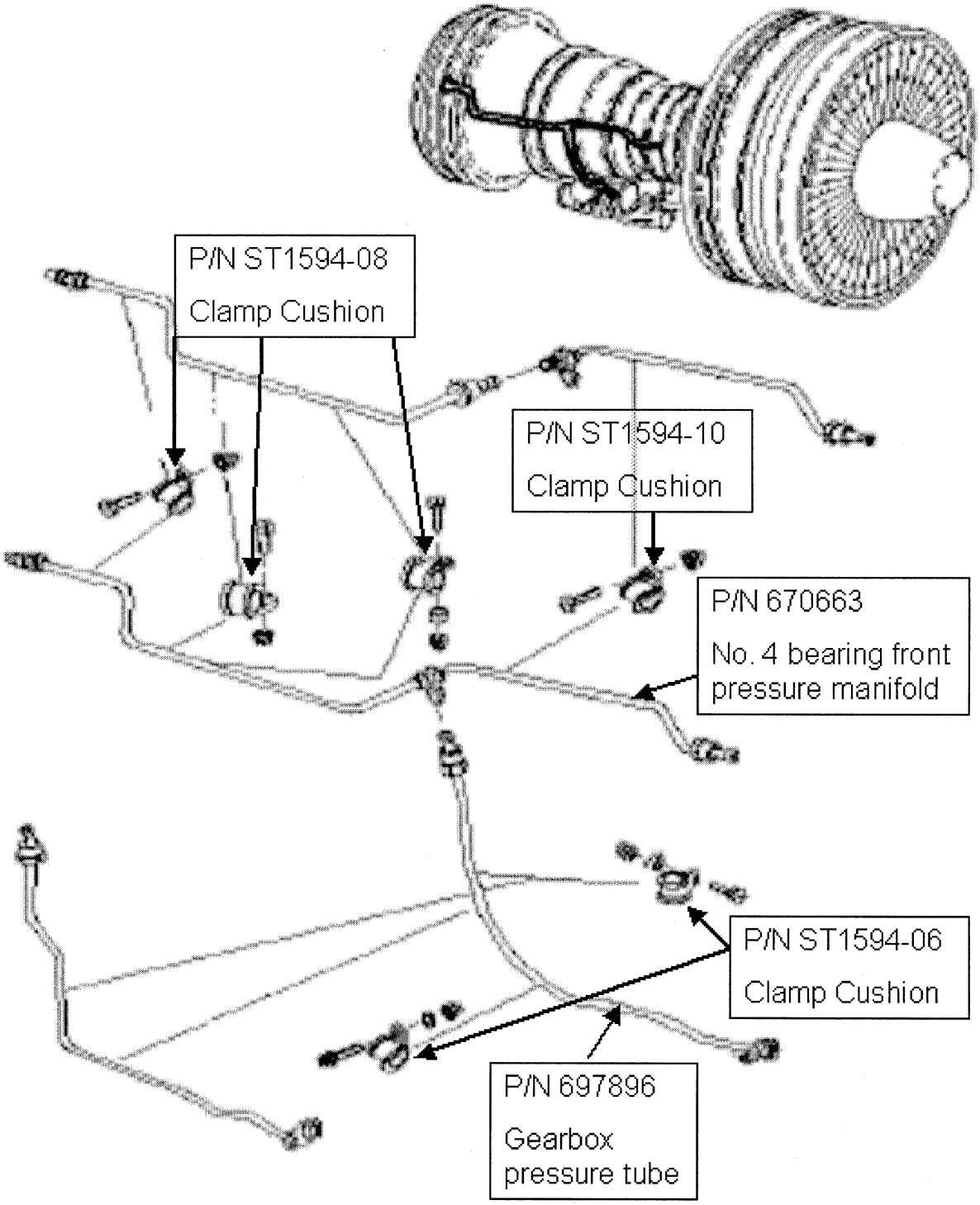

Figure 1

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(i) Information on general inspection of these parts can be found in the Boeing 747 Aircraft Maintenance Manual, section 72–00–00, and in PW Standard Practices Manual, P/N 585005.

Reporting Requirements

(j) Report within 30 calendar days of the inspection, the results that equal or exceed the reject criteria to: Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7189; fax (781) 238–7199. Reporting requirements have been approved by the Office of Management and Budget control number 2120–0056.

Alternative Methods of Compliance

(k) 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

(l) None.

Related Information

(m) None.

Issued in Burlington, Massachusetts, on November 25, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–30073 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–03–AD; Amendment 39–13376; AD 2003–24–07]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, and PA–31P–350 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all The New Piper Aircraft, Inc. (Piper) Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, and PA–31P–350 airplanes. This AD requires you to install an inspection hole (or use for inspection the tooling hole in the rudder bottom rib), conduct a detailed visual inspection of the rudder torque tube and associated ribs for corrosion, and, if corrosion is found, replace or repair the rib/rudder torque tube assembly. This AD is the result of reports of rudder tube corrosion. The actions specified by this AD are intended to detect and correct corrosion in the rudder torque tube assembly and rudder rib, which could result in failure of the rudder torque tube. This failure could lead to loss of rudder control.

DATES: This AD becomes effective on February 9, 2004.

As of February 9, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information referenced in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584.

You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–03–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6082; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received several reports of rudder tube and rib corrosion on Piper PA–31 Series airplanes. The area surrounding the rudder torque tube assembly and rudder rib does not have a means or access to inspect in this area and neither means nor exits for water to drain out.

What is the potential impact if FAA took no action? Corrosion in the rudder torque tube assembly and rudder rib could result in failure of the rudder torque tube. This failure could lead to loss of rudder control.

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 all Piper Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, and PA–31P–350 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 3, 2003 (68 FR 33030). The NPRM proposed to require you to install an inspection hole, conduct a detailed visual inspection of the rudder torque tube and associated ribs for corrosion, and, if corrosion is found, replace the rib/rudder torque tube assembly.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in the development of this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Extend the Compliance Time

What is the commenter's concern? A commenter recommends extending the compliance time from 100 hours time-in-service (TIS) to 150 hours TIS. The commenter states that the extension is necessary due to a reported lack of parts and the difficulty in scheduling involved with AD compliance.

What is FAA's response to the concern? The FAA agrees that 150 hours TIS would be a more realistic compliance time.

We are changing the final rule AD action accordingly.

Comment Issue No. 2: Allow Option to Repair Parts

What is the commenter's concern? The commenter recommends the following: if you find ''light corrosion'' or ''corrosion that could significantly weaken the rib/rudder torque tube assembly that is less than 50 percent of the thickness over an area less than two square inches' then you may clean up, repair, and coat the corroded area to prevent further damage and continue the part in service.

What is FAA's response to the concern? The FAA is currently unaware of any approved repair design for the rib/rudder torque tube assembly. However, FAA has no objection to operation of aircraft with parts that have been repaired or reworked per an FAA-approved repair design.

Therefore, we are changing the final rule AD action to provide the option of repairing with an FAA-approved design.

Comment Issue No. 3: Special Flight Permits Are Not Addressed in the NPRM

What is the commenter's concern? The commenter states that since special flight permits are not addressed in the NPRM, the current 14 CFR part 39 applies and that there is no restriction against issuing a special flight permit.

What is FAA's response to the concern? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that

relates to special flight permits. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we did not include it in this AD action.

We are not making any changes to the final rule AD action.

Comment Issue No. 4: Allow an Alternate Method of Inspection

What is the commenter's concern? The commenter suggests an alternative to installing an inspection hole in the rudder skin for the rudder torque tube assembly. This alternative method of inspection is to use the tooling hole in the rudder bottom rib since this is convenient and does not contribute to corrosion. Further, you could enlarge the tooling hole to ease use of inspection tools.

What is FAA's response to the concern? The FAA agrees that the proposed alternative use of the tooling hole (with optional enlargement) in the rudder bottom rib is an acceptable substitute to installing an access hole.

We are changing the final rule AD action accordingly.

Comment Issue No. 5: Allow Application of Corrosion Inhibitor

What is the commenter's concern? The commenter recommends allowing application of rust inhibitor compound.

What is FAA's response to the concern? The application of rust inhibitor compound to the contact surfaces is identified in Piper Service Bulletin No. 1105A, dated September 22, 2003. As a minor correction, we are also noting to protect bare metal per Section 8, FAA Advisory Circular (AC) 43.13–1B.

We are incorporating the referenced correction in the final rule AD action.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, 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

How many airplanes does this AD impact? We estimate that this AD affects 2,269 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes?

We estimate the following costs to accomplish the installation of inspection and drain holes and inspection of torque tube and associated ribs for corrosion:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 per hour = $180	$10	$190	2,269 × $190 = $431,110

We estimate the following costs to accomplish any necessary corrosion repairs/replacements of the rib/torque tube assembly that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this repair/replacement:

Labor cost	Parts cost	Total cost per airplane
16 workhours × $60 per hour = $960	$800	$1,760

Regulatory Findings

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

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this 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 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 ''2003–CE–03–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–24–07 The New Piper Aircraft, Inc.: Amendment 39–13376; Docket No. 2003–CE–03–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on February 9, 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 are certificated in any category:

Model	Serial numbers
PA–31, PA–31–300, PA–31-325.	31–2 through 31–8312019
PA–31–350	31–5001 through 31–8553002
PA–31P	31P–1 through 31P–7730012
PA–31P–350	31P–8414001 through 31P–8414050
PA–31T	31T–7400001 through 31T–8120104
PA–31T1	31T–7804001 through 31T–1104017
PA–31T2	31T–8166001 through 31T–1166008
PA–31T3	31T–8275001 through 31T–5575001

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of rudder tube corrosion. The actions specified by this AD are intended to detect and correct corrosion in the rudder torque tube assembly and rudder rib, which could result in failure of the rudder torque tube. This 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) Install an inspection hole in the rudder skin for the rudder torque tube assembly; OR instead of installing an inspection hole, use the tooling hole in the rudder bottom rib. You may enlarge the diameter of the tooling hole no more than 0.25 inches to facilitate inspection and corrosion treatment.	Within the next 150 hours time-in-service (TIS) after February 9, 2004 (the effective date of this AD), unless already accomplished.	Install an inspection hole per The New Piper Aircraft, Inc. Service Bulletin No. 1105A, dated September 22, 2003. Protect bare metal per Section 8, FAA Advisory Circular (AC) 43.13–1B.
(2) Visually inspect the rudder torque tube and associated ribs for corrosion.	Before further flight after the installation required in paragraph (e)(1) of this AD and thereafter at intervals not to exceed 12 calendar months.	Follow The New Piper Aircraft, Inc. Service Bulletin No. 1105A, September 22, 2003.
(3) If you find corrosion damage: ..... (i) Replace the rib/rudder torque assembly; OR (ii) Repair the damaged torque tube using an FAA-approved repair design.	Before further flight after any inspection required in paragraph (e)(2) of this AD where corrosion damage is found.	Follow The New Piper Aircraft, Inc. Service Bulletin No. 1105A, dated September 22, 2003. Repairs must address items in paragraph (f) of this AD and may be approved per FAA Order 8300.10 (Volume 2, Chapter 1), Airworthiness Inspector's Handbook.

(f) All repairs must address the following:

(1) Detect hidden corrosion damage:

(i) In the faying surface between the rudder ribs and torque tube assembly attachments.

(ii) Inside the bore of the torque tube.

(2) Establish procedures for removing corrosion or for corrosion prevention of repaired parts. Advisory Circular (AC) 43.13–1B Acceptable Methods, Techniques, and Practices-Aircraft Inspection and Repair, and AC 43–4A, Corrosion Control for Aircraft, provide resources for establishment of these procedures.

(3) For repairs involving material removal without reinforcement: Define a clear, accurate, and complete description of negligible damage limits. Note that acceptable amounts of material removal may be location-dependent. Higher-stressed areas will be less tolerant of material removal.

(4) For all repairs involving reinforcement: A clear, accurate, and complete description of the repair design must be established per 14 CFR part 21.31.

(5) Verify that all repairs follow Subpart C—Strength Requirements and Subpart D—Design and Construction of Civil Aviation Regulations (CAR) 3, dated May 15, 1956 (the original certification basis for the Piper PA–31 Series as shown in type certificate data sheets A8EA and A20SO).

May I Request an Alternative Method of Compliance?

(g) 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, Atlanta Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact William O. Herderich, Aerospace Engineer, FAA, Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6082; facsimile: (770) 703–6097.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in The New Piper Aircraft, Inc. Service Bulletin No. 1105A, dated September 22, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin per 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Issued in Kansas City, Missouri, on November 24, 2003.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–29871 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16503; Airspace Docket No. 03–ACE–87]

Modification of Class E Airspace; Winterset, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Winterset, IA. A review of controlled airspace for Winterset-Madison County Airport, Winterset, IA, indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace

required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area is enlarged to conform to the criteria in FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, April 15, 2004. Comments for inclusion in the Rules Docket must be received on or before January 21, 2004.

ADDRESSES: Send comments on this rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16503/Airspace Docket No. 03–ACE–87, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. the Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Winterset, IA. An examination of controlled airspace for Winterset-Madison County Airport reveals it does not meet the criteria for 700 AGL airspace required for diverse departures as specified in FAA Order 7400.2E. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment enlarges the radius of the controlled airspace area around Winterset-Madison County Airport and brings the legal description into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16503/Airspace Docket No. 03–ACE–87.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

* * * * *

ACE IA E5 Winterset, IA

Winterset-Madison County Airport, IA
(Lat. 41°21′46″ N., long. 92°01′16″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Winterset-Madison County Airport.

Issued in Kansas City, MO, on November 20, 2003.

David W. Hope,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–30013 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM04–1–000]

Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands

November 20, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: In accordance with the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is based on the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 2003 through September 30, 2004 the fees in this notice will become effective October 1, 2003. The fees will apply to fiscal year 2004 annual charges for the use of government lands.

The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB that this rule is not a ''major rule'' as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C 804(2).

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Fannie Kingsberry, Financial Services Division, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6108.

SUPPLEMENTARY INFORMATION: *Document Availability:* In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

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List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Thomas R. Herlihy,

Executive Director, Office of the Executive Director.

■ Accordingly, the Commission, effective October 1, 2003, amends part 11 of Chapter I, Title 18 of the Code of Federal Regulations, as follows:

PART 11—[AMENDED]

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

■ 2. In part 11, Appendix A is revised to read as follows.

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2004

State/County	Rate per acre
Alabama: All Counties	$26.64
Arkansas: All Counties	19.99
Arizona:	
Apache	6.64
Cochise	
Gila	
Graham	
La Paz	
Mohave	
Navajo	
Pima	
Yavapai	
Yuma	
Coconino (North of Colorado R.)	
Coconino (South of Colorado R.)	26.64
Greenlee	
Maricopa	
Pinal	
Santa Cruz	
California:	
Imperial	13.32
Inyo	
Lassen	
Modoc	
Riverside	
San Bernardino	
Siskiyou	19.99
Alameda	33.30
Alpine	
Amador	
Butte	
Calaveras	
Colusa	
Contra Costa	
Del Norte	
El Dorado	
Fresno	
Glenn	
Humboldt	
Kern	33.30
Kings	
Lake	
Madera	
Mariposa	
Mendicino	
Merced	
Mono	
Napa	
Nevada	
Placer	
Plumas	
Sacramento	
San Benito	
San Joaquin	
Santa Clara	
Shasta	
Sierra	
Solano	
Sonoma	
Stanislaus	
Sutter	
Tehama	
Trinity	
Tulare	
Tuolumne	
Yolo	
Yuba	
Los Angeles	39.98
Marin	
Monterey	
Orange	
San Diego	
San Francisco	
San Luis Obispo	
San Mateo	
Santa Barbara	
Santa Cruz	
Ventura	
Colorado:	
Adams	6.64
Arapahoe	
Bent	
Cheyenne	
Crowley	
Elbert	
El Paso	
Huerfano	
Kiowa	
Kit Carson	
Lincoln	6.64
Logan	
Moffat	
Montezuma	
Morgan	
Pueblo	
Sedgewick	
Washington	
Weld	
Yuma	
Baca	13.32
Broomfield [1]	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2004—Continued

State/County	Rate per acre
Dolores	
Garfield	
Las Animas	
Mesa	
Montrose	
Otero	
Prowers	
Rio Blanco	
Routt	
San Miguel	
Alamosa	26.64
Archuleta	
Boulder	
Chaffee	
Clear Creek	
Conejos	
Costilla	
Custer	
Denver	
Delta	
Douglas	
Eagle	
Fremont	
Gilpin	
Grand	
Gunnison	
Hinsdale	
Jackson	
Jefferson	
Lake	
La Plata	
Larimer	
Mineral	
Ouray	
Park	
Pitkin	
Rio Grande	
Saguache	
San Juan	26.64
Summit	
Teller	
Connecticut: All Counties	6.64
Florida:	
Baker	39.98
Bay	
Bradford	
Calhoun	
Clay	
Columbia	
Dixie	
Duval	
Escambia	
Franklin	
Gadsden	
Gilchrist	
Gulf	
Hamilton	
Holmes	
Jackson	
Jefferson	
Lafayette	
Leon	
Liberty	
Madison	
Nassau	
Okaloosa	
Santa Rosa	
Suwannee	
Taylor	
Union	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2004—Continued

State/County	Rate per acre
Wakulla	
Walton	
Washington	
All Other Counties	66.59
Georgia:.	
All Counties	39.98
Idaho:	
Cassia	6.64
Gooding	
Jerome	
Lincoln	
Minidoka	
Oneida	
Owyhee	
Power	
Twin Falls	
Ada	19.99
Adams	
Bannock	
Bear Lake	
Benewah	
Bingham	
Blaine	
Boise	
Bonner	
Bonneville	
Boundary	
Butte	
Camas	
Canyon	
Caribou	
Clark	
Clearwater	
Custer	
Elmore	
Franklin	
Fremont	
Gem	
Idaho	
Jefferson	
Kootenai	
Latah	
Lemhi	
Lewis	
Madison	
Nez Perce	
Payette	
Shoshone	
Teton	
Valley	
Washington	
Illinois: All Counties	19.99
Indiana: All Counties	33.30
Kansas:	
Morton	13.32
All Other Counties	6.64
Kentucky: All Counties	19.99
Louisiana: All Counties	39.98
Maine: All Counties	19.99
Michigan:	
Alger	19.99
Baraga	
Chippewa	
Delta	
Dickinson	
Gogebic	
Houghton	
Iron	
Keweenaw	
Luce	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2004—Continued

State/County	Rate per acre
Macking	
Marquette	
Menominee	
Ontonagon	
Schoolcraft	
All Other Counties	26.64
Minnesota: All Counties	19.99
Mississippi: All Counties	26.64
Missouri: All Counties	19.99
Montana	
Big Horn	6.64
Blaine	
Carter	
Cascade	
Chouteau	
Custer	
Daniels	
McCone	
Meagher	
Dawson	
Fallon	
Fergus	
Garfield	
Glacier	
Golden Valley	
Hill	
Judith Basin	
Liberty	
Musselshell	
Petroleum	
Phillips	
Pondera	
Powder River	
Prairie	
Richland	
Roosevelt	
Rosebud	
Sheridan	6.64
Teton	
Toole	
Treasure	
Valley	
Wheatland	
Wibaux	
Yellowstone	
Beaverhead	19.99
Broadwater	
Carbon	
Deer Lodge	
Flathead	
Gallatin	
Granite	
Jefferson	
Lake	
Lewis & Clark	
Lincoln	
Madison	
Mineral	
Missoula	
Park	
Powell	
Ravalli	
Sanders	
Silver Bow	
Stillwater	
Sweet Grass	
Nebraska: All counties	6.64
Nevada:	
Churchill	3.33
Clark	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2004—Continued

State/County	Rate per acre
Elko	
Esmeralda	
Eureka	
Humboldt	
Lander	
Lincoln	
Lyon	
Mineral	
Nye	
Pershing	
Washoe	
White Pine	
Carson City	33.30
Douglas	
Story	
New Hampshire: All counties	19.99
New Mexico:	
Chaves	6.64
Curry	
De Baca	
Dona Ana	
Eddy	
Grant	
Guadalupe	
Harding	
Hidalgo	
Lea	
Luna	
McKinley	
Otero	
Quay	
Roosevelt	
San Juan	
Socorro	
Torrence	
Rio Arriba	13.32
Sandoual	
Union	
Bernalillo	26.64
Catron	
Cibola	
Colfax	
Lincoln	
Los Alamos	
Mora	
San Miguel	
Santa Fe	
Sierra	
Taos	
Valencia	
New York: All counties	26.64
North Carolina: All counties	39.98
North Dakota: All counties	6.64
Ohio: All counties	26.64
Oklahoma:	
Beaver	13.32
Cimarron	
Roger Mills	
Texas	
Le Flore	19.99
McCurtain	
All other counties	6.64
Oregon:	
Harney	6.64
Lake	
Malheur	
Baker	13.32
Crook	
Deschutes	
Gilliam	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2004—Continued

State/County	Rate per acre
Grant	
Jefferson	
Klamath	
Morrow	
Sherman	
Umatilla	
Union	
Wallowa	
Wasco	
Wheeler	
Coos	19.99
Curry	
Douglas	
Jackson	
Josephine	
Benton	26.64
Clackamas	
Clatsop	
Columbia	
Hood River	
Lane	
Lincoln	
Linn	
Marion	
Multnomah	
Polk	
Tillamook	
Washington	
Yamhill	
Pennsylvania: All counties	26.64
Puerto Rico: All	39.98
South Carolina: All counties	39.98
South Dakota:	
Butte	19.99
Custer	
Fall River	
Mead	19.99
Pennington	
All other counties	6.64
Tennessee: All counties	26.64
Texas:	
Culberson	6.64
El Paso	
Hudspeth	
All other counties	39.98
Utah:	
Beaver	6.64
Box Elder	
Carbon	
Duchesne	
Emery	
Garfield	
Grand	
Iron	
Juab	
Kane	
Millard	
San Juan	
Tooele	
Uintah	
Wayne	
Washington	13.32
Cache	19.99
Daggett	
Davis	
Morgan	
Piute	
Rich	
Salt Lake	
Sanpete	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2004—Continued

State/County	Rate per acre
Sevier	
Summit	
Utah	
Wasatch	
Weber	
Vermont: All counties	26.64
Virginia: All counties	26.64
Washington:	
Adams	13.32
Asotin	
Benton	
Chelan	
Columbia	
Douglas	
Franklin	
Garfield	
Grant	
Kittitas	
Klickitat	
Lincoln	
Okanogan	
Spokane	
Walla Walla	
Whitman	
Yakima	
Ferry	19.99
Pend Oreille	
Stevens	
Clallam	26.64
Clark	
Cowlitz	
Grays Harbor	
Island	
Jefferson	
King	
Kitsap	
Lewis	
Mason	
Pacific	
Pierce	
San Juan	
Skagit	
Skamania	
Snohomish	
Thurston	
Wahkiakum	
Whatcom	
West Virginia: All counties	26.64
Wisconsin: All counties	19.99
Wyoming:	
Albany	6.64
Campbell	
Carbon	
Converse	
Goshen	
Hot Springs	
Johnson	
Laramie	
Lincoln	
Natrona	
Niobrara	
Platte	
Sheridan	
Sweetwater	
Fremont	
Sublette	
Unita	
Washakie	
Big Horn	19.99
Crook	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2004—Continued

State/County	Rate per acre
Park	
Teton	
Weston	
All other zones	6.16

[1]**Note:** Broomfield County created November 2001 from parts of Adams, Boulder, Jefferson and Weld Counties.

[FR Doc. 03–29515 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 9096]

RIN 1545–BC53

Installment Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Removal of final regulations.

SUMMARY: This document removes regulation §§ 1.6152–1 and 301.6152–1 relating to installment payments made pursuant to section 6152 of the Internal Revenue Code. These regulations are obsolete because section 6152 was repealed for tax years beginning after December 31, 1986. The removal of these regulations will not affect taxpayers.

DATES: The removal of these regulations is effective December 3, 2003.

FOR FURTHER INFORMATION CONTACT: Janice R. Feldman, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION

Background and Explanation of Provisions

This document removes one section from the Income Tax Regulations (26 CFR part 1) and one section from the Procedure and Administration Regulations (26 CFR part 301) relating to installment payments made pursuant to section 6152 of the Internal Revenue Code. Section 6152, prior to its repeal in 1986, generally permitted a decedent's estate to pay income taxes in four equal installments, with the fourth installment due on or before 9 months after the date prescribed for the payment of the tax. Section 6152 was repealed by section 1404(c)(1) of the Tax Reform Act of 1986, (Pub. L. 99–514, 100 Stat. 2714), applicable to taxable years beginning after December 31, 1986. The repeal of section 6152 has rendered §§ 1.6152–1 and 301.6152–1 obsolete.

Section 1.6152–1 was added by TD 6364, published in the **Federal Register** for November 26, 1960 (25 FR 12138). Section 1.6152–1 was amended by TD 6914 (32 FR 3819) and by TD 7953 (49 FR 19643). Section 1.6152–1, as amended, provides that corporations (relevant only with respect to provisions in section 6152 repealed in 1982) and estates of decedents may elect to pay income taxes in installments.

Section 301.6152–1 was added by TD 6498 (25 FR 10154) published in the **Federal Register** for October 25, 1960. Section 301.6152–1 provides that the regulations relating to the installment payments of income taxes are found at § 1.6152–1.

Effect on Other Documents

The final regulation § 1.6152–1 published in the **Federal Register** for May 9, 1984 (49 FR 19643) and the final regulation § 301.6152–1 published in the **Federal Register** for October 25, 1960 (25 FR 10154) are removed as of December 3, 2003.

Special Analyses

It has been determined that the removal of these regulations is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Because this rule merely removes regulatory provisions made obsolete by statute, prior notice and comment and a delayed effective date are unnecessary and contrary to the public interest. 5 U.S.C. 553(b)(B) and (d). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Drafting Information

The principal author of the removals of these regulations is Janice R. Feldman of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.6152–1 [Removed]

■ **Par. 2.** Section 1.6152–1 is removed.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 3.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 301.6152–1 [Removed]

■ **Par. 4.** Section 301.6152–1 is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 5.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

§ 602.101 [Amended]

■ **Par. 6.** In § 602.101, paragraph (b) is amended by removing the entry for 1.6152–1 from the table.

Approved: November 19, 2003.

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Pamela F. Olson,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 03–29999 Filed 12–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustments—Units 9(D), 10 and 24

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Seasonal adjustments.

SUMMARY: This provides notice of the Federal Subsistence Board's management actions to provide for a subsistence harvest opportunity for caribou in Units 9(D) and 10 (Unimak Island) and to protect a declining moose population in Unit 24. These actions provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on June 27, 2003. Those regulations established seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2003 regulatory year.

DATES: The Unit 9(D) and 10 (Unimak Island) action is effective October 29, 2003, through March 31, 2004. The Unit 24 action is effective November 3, 2003, through December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and title 36, part 242 of the Code of Federal Regulations (CFR). Consistent with subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2003 hunting seasons, harvest limits, and methods and means were published on June 27, 2003, (68 FR 38464).

Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Game (BOG) and the Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Federal Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These adjustments are necessary because of the need to provide additional subsistence opportunity for harvest of a rapidly expanding caribou population in Units 9(D) and 10 (Unimak Island) and to enhance productivity of a declining moose population in a portion of Unit 24. These actions are authorized and in accordance with 50 CFR 100.19(d–e) and 36 CFR 242.19(d–e).

Units 9(D) and 10 (Unimak Island)—Caribou

The caribou population has increased in both units and has reached and/or exceeded the upper level population objectives specified in the management plan. Increasing both the fall and winter harvest limits will provide additional harvest opportunities for subsistence users. Increasing the Federal subsistence harvest limits for caribou hunting on Federal public lands in Units 9(D) and 10 (Unimak Island) should help to stabilize the current population in line with the carrying capacity of the habitat for this herd. A previous Board action had modified the limits for the fall season. In this action the Federal Subsistence Board increased the harvest limit for caribou in Unit 9(D) from 1 to 2 and from 2 to 4 for Unit 10 (Unimak Island) for the November 15–March 31 caribou season.

Unit 24—Moose

Based on an analysis of results from trend surveys conducted in areas in Unit 24, ongoing population declines are somewhat uniform throughout the Koyukuk River drainage. Based on results from trend surveys conducted in portions of Unit 24 between 1985 and 1999, there have been significant declines in productivity and yearling bull recruitment.

These declines continue and have been documented through results from surveys conducted from 2000 through 2002. Results from limited 2003 surveys were similar, indicating that overall productivity has not increased. Current Federal regulations provide opportunity to harvest bull moose in the affected area August 1 through December 31. While increased cow harvest levels have provided additional opportunity and have served to stabilize moose populations in past years, prolonged harvest at the current levels will likely contribute to further declines in productivity and recruitment. As current management objectives prescribe more conservative yields than allowed for through current regulatory provisions, regulatory changes are needed to decrease the total cow harvest and to maintain productivity and recruitment. The Board had previously closed Unit 21(D) and Unit 24 outside of the Gates of the Arctic National Park to antlerless harvest during the fall season. This Board action shortens the antlerless moose season in Unit 24—that portion that includes the John River drainage within the Gates of the Arctic National Park. The existing season and harvest limit for the affected area is 1 moose during August 1 through December 31. This action prohibits the harvest of antlerless moose within the affected area November 3–December 31. ADF&G has executed an Emergency Order for a similar closure of the State antlerless moose season on private lands within the John and Alatna River drainages of Unit 24 consistent with the Management Plan, which calls for

additional regulatory restrictions on antlerless moose harvest in response to the ongoing population declines.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these adjustments are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate measures could seriously affect the continued viability of wildlife populations, adversely impact subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276.)

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The adjustments have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as firearm, ammunition, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: November 12, 2003.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: November 12, 2003.

Steve Kessler,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 03–30068 Filed 12–2–03; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP No. UT–001–0048, UT–001–0049, FRL–7593–2]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; State Implementation Plan Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: When EPA approved Utah State Implementation Plan (SIP) revisions regarding the numbering and format of the SIP on June 25, 2003, we inadvertently submitted incorrect material for incorporation by reference. EPA is correcting this error with this document.

EFFECTIVE DATE: This final rule is effective January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA, Region 8, (303) 312–6144.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we'' or ''our'' is used it means the EPA.

Section 553 of the Administrative Procedures Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting incorrect text in a previous rulemaking. Thus notice and public procedures are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

I. Correction

Correction to Federal Register Document Published on June 25, 2003 (68 FR 37744)

On June 25, 2003, we published a final rule approving Utah SIP revisions pertaining to the numbering and format of the SIP (68 FR 37744). When we published this rule, we incorporated by reference changes to Section IX.C.7.h(3) for which the State inadvertently submitted incorrect material. The State has subsequently submitted the correct material for SIP Section IX.C.7.h(3). Therefore, we are correcting this incorporation by reference error by resubmitting the incorporation by reference material for 40 CFR 52.2320(c)(56)(i)(C) to the Air and Radiation Docket and Information Center and the Office of the Federal Register.

II. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in the June 25, 2003 rule approving the revisions to the numbering and formatting of the Utah SIP.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of January 2, 2004. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. These corrections to the identification of plan for Utah is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 14, 2003.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

[FR Doc. 03–30043 Filed 12–2–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MB Docket No. 02–230; FCC 03–273]

Digital Broadcast Content Protection

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this item, the Commission adopts final rules implementing an ATSC flag-based redistribution control system to protect digital broadcast television content from unauthorized redistribution and ensure the continued flow of high value digital content to consumers via over-the-air broadcasting. This action is taken pursuant to the Commission's ancillary authority and is intended to preserve the viability of over-the-air broadcasting and further the digital television transition.

DATES: Effective January 2, 2004, except for §§ 73.9002 and 73.9008 which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Mort, *susan.mort@fcc.gov,* (202) 418–1043. For additional information concerning the information collection(s) contained in this document, contact Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet at *Leslie.Smith@fcc.gov*, or at 202–418–0217.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Report and Order and Further Notice of Proposed Rulemaking, FCC 03–273, adopted and released on November 4, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *Brian.Millin@fcc.gov*.

Paperwork Reduction Act

The Report and Order portion of this document contains either a new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Second Report and Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due February 2, 2004.

In addition to filing comments with the Secretary, a copy of any PRA comments on the information collections contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kim_A._Johnson@omb.eop.gov*.

Summary of the Report and Order

1. In the *Report and Order* portion of this *Report and Order and Further Notice of Proposed Rulemaking*, the Commission adopts final rules implementing an ATSC flag-based redistribution control system to protect digital broadcast television content from unauthorized redistribution. Absent this action, we conclude that the threat of widespread unauthorized redistribution of high value digital content will deter content providers from making such content available through broadcast outlets. The creation of a redistribution control system for digital broadcast content is therefore necessary to preserve the future viability of over-the-air broadcasting.

2. Under this system, broadcasters are not required to, but may use the ATSC flag for redistribution control purposes only. The final rules require that demodulators integrated within, or produced for use in, digital television reception devices, including PC and IT products, (''Demodulator Products'') must recognize and give effect to the ATSC flag pursuant to certain compliance and robustness rules. MVPDs are permitted to perpetuate the flag in two ways on their systems: (1) By MVPD pass-through of the ATSC flag where the retransmission is unencrypted; or (2) where the retransmission is encrypted, by conveying the presence of the flag by some means that requires the consumer's reception equipment to protect the content as if the flag were present.

3. As an enforcement mechanism, the *Report and Order* adopts written commitment regimes whereby (1) manufacturers or importers of ATSC demodulators obtain from buyers of such products a written commitment that they will incorporate such demodulators into compliant and robust devices or sell or distribute to third parties that have also made such written commitment, and (2) manufacturers or importers of Peripheral TSP Products agree to abide by the Demodulator Products compliance and robustness rules. The *Report and Order* further establishes interim procedures by which proponents of a particular content protection or recording technology can certify to the Commission that such technology is appropriate for use in Demodulator Products.

4. *Paperwork Reduction Act:* This *Report and Order* contains either a new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this *Report and Order* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due February 2, 2004.

5. *Final Regulatory Flexibility Analysis:* As required by the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') relating to this *Report and Order*. The FRFA is set forth within.

6. *Ordering Clauses: It is ordered* that pursuant to the authority contained in Sections 1, 2, 4(i) and (j), 303, 307, 309(j), 336, 337, 396(k), 403, 601, 614(b) and 624a, of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i) and (j), 303, 307, 309(j), 336, 337, 396(k), 403, 521, 534(b) and 544a, that the Commission's rules ARE HEREBY AMENDED as set forth herein, and shall become effective 30 days after publication in the **Federal Register** except that rule sections 73.9002 and 73.9008 that contain information collection requirements under the PRA is not effective until approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief

Counsel for Advocacy of the Small Business Administration.

Final Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Further Notice of Proposed Rulemaking* (''FNPRM''). The Commission sought written public comment on the proposals in the FNPRM, including comment on the IRFA. No comments were received on the IRFA. This present Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

8. *Need for, and Objectives of, the Report and Order.* The need for FCC regulation in this area derives from a forthcoming threat to over-the-air broadcast television in so far as high quality digital programming may be withheld from broadcast outlets by content owners fearful of the content's indiscriminate redistribution. The objective of the final rules, as set forth in the *Report and Order* portion of the *Report and Order and Further Notice of Proposed Rulemaking*, is to facilitate the DTV transition by creating a flag-based content protection system which will limit the indiscriminate redistribution of digital broadcast content and thereby protect the continued flow of high value content to consumers via over-the-air broadcasting.

9. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* No comments were received in response to the IRFA.

10. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental entity. In addition, the term ''small Business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

11. *Television Broadcasting.* The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV). Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

12. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

13. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite (''DBS'') services, home satellite dish (''HSD'') services, multipoint distribution services (''MDS''), multichannel multipoint distribution service (''MMDS''), Instructional Television Fixed Service (''ITFS''), local multipoint distribution service (''LMDS''), satellite master antenna television (''SMATV'') systems, and open video systems (''OVS''). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

14. *Cable Operators.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules adopted in this *Report and Order*.

15. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

16. *Direct Broadcast Satellite (''DBS'') Service.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution Services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. There are four licensees of DBS services under part 100 of the Commission's rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission,

however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

17. *Home Satellite Dish (''HSD'') Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution Services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C–band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

18. *Multipoint Distribution Service (''MDS''), Multichannel Multipoint Distribution Service (''MMDS'') Instructional Television Fixed Service (''ITFS'') and Local Multipoint Distribution Service (''LMDS'').* MMDS systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

19. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $12.5 million annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

20. The SBA definition of small entities for Cable and Other Program Distribution Services, which includes such companies generating $12.5 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

21. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding calendar years. These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

22. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

23. *Satellite Master Antenna Television (''SMATV'') Systems.* The SBA definition of small entities for Cable and Other Program Distribution Services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities

24. *Open Video Systems (''OVS'').* Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of Cable and Other Program Distribution Services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS

that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

25. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment as well as radio and television broadcasting and wireless communications equipment. These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

26. *Computer Manufacturers.* The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity. Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities. The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

27. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* On the transmission side, the final rules do not require the use of the ATSC flag by broadcasters, but instead permit the use of the flag at the broadcaster's discretion for redistribution control purposes.

28. With respect to the reception side of the equation, the final rules require that demodulators integrated within, or produced for use in, DTV reception devices, including PC and IT products, (*i.e.*, ''Covered Demodulator Products''), must recognize and give effect to the ATSC flag pursuant to certain compliance and robustness rules. The compliance rules detail the appropriate manner in which Demodulator Products may output flag-marked content. As to robustness, the generalized ''ordinary user'' standard contained in the final rules should afford consumer electronics, and IT and PC manufacturers, flexibility in determining how to protect flag-marked content.

29. Administratively, the final rules adopt a written commitment regime whereby manufacturers or importers of demodulators obtain from buyers a written commitment that they will incorporate such demodulators into compliant and robust devices, or sell or distribute to third parties that have also made such written commitment. The *Report and Order* also adopts a written commitment regime to ensure that manufacturers or importers of ''Peripheral TSP Products'' that can be used in connection with demodulators will abide by the Demodulator Product compliance and robustness rules.

30. The *Report and Order* also establishes interim procedures by which proponents of a particular content protection or recording technology can certify to the Commission that such technology is appropriate for use in Demodulator Products. Upon review of a proponent's submission, the Commission will issue a public notice. If no objection is received within 20 days, the Commission will expeditiously determine whether the technology is approved for use in Demodulator Products. If substantive objections are received with respect to a particular technology, the Commission will undertake an expedited review of its merits. The interim procedures also provide for the revocation of insecure or compromised content protection and recording technologies.

31. Finally, the *Report and Order* permits MVPDs to perpetuate the flag in two ways on their systems: (1) By MVPD pass-through of the ATSC flag where the retransmission is unencrypted; or (2) where the retransmission is encrypted, by conveying the presence of the flag by some means that requires the consumer's reception equipment to protect the content as if the flag were present.

32. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

33. Because use of the ATSC flag is voluntary on the part of broadcasters, we do not believe that small broadcast stations will be significantly economically affected by the final rules. On the reception side, while all consumer electronics, information technology, and personal computer manufacturers will be required to integrate flag recognition capability into

devices designed for television reception, we do not believe that small manufacturers will be adversely affected since the cost of integrating the necessary technology is *de minimis*. The written commitment regime should likewise have no significant effect on small manufacturers or importers as there is little cost involved in preparing and filing a written commitment. As to the interim procedures for approval of new content protection and recording technologies, we do not believe that small entities seeking approval will be significantly economically affected by the applicable procedures. Finally, we believe that the flexibility afforded MVPDs in how to effectuate the flag will mitigate any potential significant economic impact on smaller MVPDs.

34. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

35. *Report to Congress:* The Commission will send a copy of the *Report and Order and Further Notice of Proposed Rulemaking*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects

47 CFR Part 73

Incorporation by reference, Television.

47 CFR Part 76

Cable television, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 76 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

■ 2. Add subpart L to part 73 to read as follows:

Subpart L—Digital Broadcast Television Redistribution Control

Sec.

§ 73.8000 Incorporation by reference.

(a) The materials listed in this section are incorporated by reference in this part. These incorporations by reference were approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and at the Federal Communications Commission, 445 12th St., SW., Reference Information Center, Room CY–A257, Washington, DC 20554.

(b) The following materials are available for purchase from at least one of the following addresses: Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112 or at *http://www.global.ihs.com*; or American National Standards Institute, 25 West 43rd Street, 4th Floor, New York, NY 10036 or at *http://www.webstore.ansi.org/ansidocstore/default.asp.*

(1) ATSC A/52: ''ATSC Standard Digital Audio Compression (AC–3),'' 1995, IBR approved for § 73.682.

(2) ATSC Doc. A/53B, Revision B with Amendment 1: ''ATSC Digital Television Standard,'' August 7, 2001, IBR approved for § 73.682, except for Section 5.1.2 (''Compression format constraints'') of Annex A (''Video Systems Characteristics'') and the phrase ''*see* Table 3'' in Section 5.1.1. Table 2 and Section 5.1.2 Table 4.

(3) ATSC A/65B: ''ATSC Standard: Program and System Information Protocol for Terrestrial Broadcast and Cable (Revision B),'' March 18, 2003, IBR approved for §§ 73.9000 and § 73.9001.

(4) International Standard ISO/IEC 13818–1:2000(E); ''Information Technology ''Generic Coding of Moving Pictures and Associated Audio Information: Systems,'' 2000, IBR approved for § 73.9000.

■ 3. Add subpart M to part 73 to read as follows:

Subpart M—Digital Broadcast Television Redistribution Control

Sec.

§ 73.9000 Definitions.

(a) *Authorized digital output protection technology* means a technology approved pursuant to the procedures in § 73.9008.

(b) *Authorized recording method* means a recording method approved pursuant to the procedures in § 73.9008.

(c) *Bona fide reseller* means a party regularly engaged, or about to become regularly engaged, in the lawful commercial enterprise of selling, reselling, manufacturing, or assembling demodulators, or products incorporating demodulators, in compliance with this subpart.

(d) *Broadcast flag* means the redistribution control descriptor (rc_descriptor()) described in ATSC A/65B: ''Standard: Program and System Information Protocol for Terrestrial Broadcast and Cable (Revision B),'' (incorporated by reference, *see* § 73.8000).

(e) *Computer product* means a product that is designed for or permits the end user to install a wide variety of commercially available software applications thereon, such as a personal computer, handheld ''Personal Digital Assistant'' and the like, and further includes a subsystem of such a product, such as a graphics card.

(f) *Covered demodulator product* means a product that is required under §§ 73.9002(a)(1) or 73.9002(b)(1) to comply with the demodulator compliance requirements, and to be manufactured in accordance with the demodulator robustness requirements.

(g) *Demodulator* means a component, or set of components, that is designed to perform the function of 8–VSB, 16–VSB, 64–QAM or 256–QAM demodulation and thereby produce a data stream for the purpose of digital television reception.

(h) *Demodulator compliance requirements* means the requirements set out in §§ 73.9003 through 73.9006.

(i) *Demodulator robustness requirements* means the requirements set out in § 73.9007.

(j) *Peripheral TSP product* means a product that is capable of accessing in usable form unscreened content or marked content passed to such product via a robust method where the manufacturer of such product has committed in writing in accordance with § 73.9002(c) that such product will comply with the demodulator compliance requirements and be manufactured in accordance with the demodulator robustness requirements.

(k) *EIT* means *Event information table* as defined in ATSC A/65B: ATSC Standard: Program and System Information Protocol for Terrestrial Broadcast and Cable (Revision B) (incorporated by reference, *see* § 73.8000).

(l) Marked content means, with respect to a Covered demodulator product, Unencrypted digital terrestrial broadcast content that such product has (1) received and demodulated and for which such product has inspected either the EIT or PMT and determined the broadcast flag to be present, or (2) where such product is a peripheral TSP product, received via a robust method and accessed in usable form, and for which such product either inspected the EIT or PMT and determined the broadcast flag to be present or determined through information robustly conveyed with such content that another covered demodulator product had previously so screened such content and determined the broadcast flag to be present; provided, however, that, with respect to a covered demodulator product, marked content shall not include content that has been passed from such product pursuant to §§ 73.9004(a)(1), 73.9004(a)(2), 73.9004(a)(3), 73.9004(a)(5), 73.9004(a)(6), or 73.9006(b).

(m) *PMT* means *program map table* as defined in International Standard ISO/IEC 13818–1:2000(E): ''Information Technology—Generic Coding of Moving Pictures and Associated Audio Information: Systems'' (incorporated by reference, see § 73.8000).

(n) *Robust method* means, with respect to the passing of unscreened content or marked content from one product to another, a content protection method that complies with § 73.9007.

(o) *Transitory image* means data that has been stored temporarily for the sole purpose of enabling a function not prohibited by this subpart but that (1) does not persist materially after such function has been performed and (2) is not stored in a way that permits copying or storing of such data for other purposes.

(p) *Unencrypted digital terrestrial broadcast content* means audiovisual content contained in the signal broadcast by a digital television station without encrypting or otherwise making the content available through a technical means of conditional access, and includes such content when retransmitted in unencrypted digital form.

(q) *Unscreened content* means, with respect to a covered demodulator product, unencrypted digital terrestrial broadcast content that such product either:

(1) Received and demodulated and for which such product has inspected neither the EIT nor the PMT for the broadcast flag; or

(2) Where such product is a peripheral TSP product, received via a robust method and accessed in usable form, and for which such product has inspected neither the EIT nor the PMT for the broadcast flag and has not determined through information robustly conveyed with such content another covered demodulator product had previously so screened such content and determined the broadcast flag to be present; provided, however, that, with respect to a covered demodulator product, unscreened content shall not include content that has been passed from such product pursuant to §§ 73.9003(a)(1), 73.9003(a)(2), 73.9003(a)(3), 73.9003(a)(4), 73.9003(a)(6), 73.9003(a)(7), or 73.9006(b).

(r) *User accessible bus* means a data bus that is designed for end user upgrades or access, such as an implementation of a smartcard interface, PCMCIA, Cardbus, or PCI that has standard sockets or otherwise readily facilitates end user access. A user accessible bus does not include memory buses, CPU buses, or similar portions of a device's internal architecture that do not permit access to content in a form usable by end users.

§ 73.9001 Redistribution control of digital television broadcasts.

Licensees of TV broadcast stations may utilize the redistribution control descriptor described in ATSC A/65B: ''ATSC Standard: Program and System Information Protocol for Terrestrial Broadcast and Cable (Revision B),'' (incorporated by reference, *see* § 73.8000) provided they do not transmit the optional additional redistribution control information.

§ 73.9002 Sale or distribution of demodulators, covered demodulator products, and peripheral TSP products.

(a) *Demodulators.* No party that manufactures or imports a demodulator shall sell or distribute in interstate commerce such Demodulator unless:

(1) At the time of such sale or distribution such demodulator is itself, or is incorporated into, a product that complies with the demodulator compliance requirements and was manufactured in accordance with the demodulator robustness requirements; or

(2) Such sale or distribution is to a party that has committed in writing pursuant to paragraph (d) of this section not to sell or distribute demodulators other than in accordance with paragraphs (a)(1) or (a)(2) of this section.

(b) *Covered demodulator products.* No party shall sell or distribute in interstate commerce a covered demodulator product that does not comply with the demodulator compliance requirements and demodulator robustness requirements. The requirements of this paragraph shall not apply to the sale or resale of a product that was manufactured prior to the effective date of this subpart or that initially was sold or distributed in compliance with this subpart.

(c) *Peripheral TSP products.* No party that manufactures or imports a peripheral TSP product shall sell or distribute such peripheral TSP product in interstate commerce unless, at the time of such sale or distribution, such peripheral TSP product complies with the demodulator compliance requirements and was manufactured in accordance with the demodulator robustness requirements. The requirements of this paragraph shall not apply to the sale or resale of a product that was manufactured prior to the effective date of this subpart or that was initially was sold or distributed in compliance with this subpart.

(d) *Written commitments.* (1) A written commitment to allow sale or distribution of demodulators under paragraph (a)(2) of this section, or for a peripheral TSP product, shall be submitted to the Federal Communications Commission, Chief, Media Bureau, Attn: Broadcast Flag Written Commitment, 445 12th Street, SW., Washington, DC 20554.

(2) The information to be provided by a party filing a written commitment to allow sale or distribution of demodulators under paragraph (a)(2) of this section shall include a statement that one of the following conditions is true:

(i) The party is a bona fide reseller;

(ii) The party is a licensed digital television broadcaster; or

(iii) The party is a multichannel video programming distributor, or other party engaged, or about to become engaged, in the lawful retransmission of unencrypted digital terrestrial broadcast

content pursuant to § 76.1909 of this chapter.

(3) The information to be provided by a party filing a written commitment for a peripheral TSP product shall include statements that that the party is engaged, or about to become engaged, in the lawful commercial enterprise of manufacturing such peripheral TSP product, and that such product will comply with the demodulator compliance requirements and be manufactured in accordance with the demodulator robustness requirements.

(4) It shall be a violation of this subpart, enforceable by the Commission, for any person that has filed a written commitment pursuant to paragraph (d) of this section to:

(i) In the case such commitment to allow sale or distribution of demodulators under paragraph (a)(2) of this section, sell or distribute the demodulator other than in accordance with paragraphs (a)(1) or (a)(2) of this section; or

(ii) In the case of such commitment for a peripheral TSP product, sell or distribute the peripheral TSP product other than in compliance with paragraph (c) of this section.

(5) Written commitments filed pursuant to paragraph (d) of this section will be publicly available in accordance with §§ 0.441 through 0.470 of this chapter.

(e) The requirements of this section shall become applicable on July 1, 2005.

§ 73.9003 Compliance requirements for covered demodulator products: unscreened content.

(a) A covered demodulator product shall not pass, or direct to be passed, Unscreened Content to any output except:

(1) To an analog output;

(2) To an 8–VSB, 16–VSB, 64–QAM or 256–QAM modulated output, provided that the broadcast flag is retained in the both the EIT and PMT;

(3) To a digital output protected by an authorized digital output protection technology authorized for use with unscreened content, in accordance with any applicable obligations established as a part of its approval pursuant to § 73.9008;

(4) Where the stream containing such content has not been altered following demodulation and such covered demodulator product outputs, or directs to be output, such content to a peripheral TSP product solely within the home or other, similar local environment, using a robust method;

(5) Where such covered demodulator product outputs, or directs to be output, such content to another product and such covered demodulator product exercises sole control (such as by using a cryptographic protocol), in compliance with the demodulator robustness requirements, over the access to such content in usable form in such other product;

(6) Where such covered demodulator product outputs, or directs to be output, such content for the purpose of making a recording of such content pursuant to paragraph (b)(2) of this section, where such content is protected by the corresponding recording method; or

(7) Where such covered demodulator product is incorporated into a computer product and passes, or directs to be passed, such content to an unprotected output operating in a mode compatible with the digital visual interface (DVI) rev. 1.0 Specification as an image having the visual equivalent of no more than 350,000 pixels per frame (*e.g.* an image with resolution of 720 x 480 pixels for a 4:3 (nonsquare pixel) aspect ratio), and 30 frames per second. Such an image may be attained by reducing resolution, such as by discarding, dithering or averaging pixels to obtain the specified value, and can be displayed using video processing techniques such as line doubling or sharpening to improve the perceived quality of the image.

(b) A covered demodulator product shall not record or cause the recording of unscreened content in digital form unless such recording is made using one of the following methods:

(1) A method that effectively and uniquely associates such recording with a single covered demodulator product (using a cryptographic protocol or other effective means) so that such recording cannot be accessed in usable form by another product except where the content of such recording is passed to another product as permitted under this subpart; or

(2) An authorized recording method authorized for use with unscreened content in accordance with any applicable obligations established as a part of its approval pursuant to § 73.9008 (provided that for recordings made on removable media, only authorized recording methods expressly approved pursuant to § 73.9008 for use in connection with removable media may be used).

(c) Paragraph (b) of this section does not impose restrictions regarding the storage of unscreened content as a transitory image.

(d) The requirements of this section shall become applicable on July 1, 2005.

§ 73.9004 Compliance requirements for covered demodulator products: marked content.

(a) A covered demodulator product shall not pass, or direct to be passed, marked content to any output except:

(1) To an analog output;

(2) To an 8–VSB, 16–VSB, 64–QAM or 256–QAM modulated output, provided that the broadcast flag is retained in the both the EIT and PMT;

(3) To a digital output protected by an authorized digital output protection technology, in accordance with any applicable obligations established as a part of its approval pursuant to § 73.9008;

(4) Where such covered demodulator product outputs, or directs to be output, such content to another product and such covered demodulator product exercises sole control (such as by using a cryptographic protocol), in compliance with the demodulator robustness requirements, over the access to such content in usable form in such other product;

(5) Where such covered demodulator product outputs, or directs to be output, such content for the purpose of making a recording of such content pursuant to paragraph (b)(2) of this section, where such content is protected by the corresponding recording method; or

(6) Where such covered demodulator product is incorporated into a computer product and passes, or directs to be passed, such content to an unprotected output operating in a mode compatible with the digital visual interface (DVI) Rev. 1.0 Specification as an image having the visual equivalent of no more than 350,000 pixels per frame (*e.g.*, an image with resolution of 720 x 480 pixels for a 4:3 (nonsquare pixel) aspect ratio), and 30 frames per second. Such an image may be attained by reducing resolution, such as by discarding, dithering or averaging pixels to obtain the specified value, and can be displayed using video processing techniques such as line doubling or sharpening to improve the perceived quality of the image.

(b) A covered demodulator product shall not record or cause the recording of marked content in digital form unless such recording is made using one of the following methods:

(1) A method that effectively and uniquely associates such recording with a single covered demodulator product (using a cryptographic protocol or other effective means) so that such recording cannot be accessed in usable form by another product except where the content of such recording is passed to another product as permitted under this subpart or

(2) An authorized recording method in accordance with any applicable obligations established as a part of its approval pursuant to § 73.9008 (provided that for recordings made on removable media, only authorized recording methods expressly approved pursuant to § 73.9008 for use in connection with removable media may be used).

(c) Paragraph (b) of this section does not impose restrictions regarding the storage of marked content as a transitory image.

(d) The requirements of this section shall become applicable on July 1, 2005.

§ 73.9005 Compliance requirements for covered demodulator products: Audio.

Except as otherwise provided in §§ 73.9003(a) or 73.9004(a), covered demodulator products shall not output the audio portions of unscreened content or of marked content in digital form except in compressed audio format (such as AC3) or in linear PCM format in which the transmitted information is sampled at no more than 48 kHz and no more than 16 bits/sample. The requirements of this section shall become applicable on July 1, 2005.

§ 73.9006 Add-in covered demodulator products.

(a) Where a covered demodulator product passes unscreened content or marked content to another product, other than where such covered demodulator product passes, or directs such content to be passed to an output (*e.g.*, where a demodulator add-in card in a personal computer passes such content to an associated software application installed in the same computer), it shall pass such content:

(1) Using a robust method; or

(2) Protected by an authorized digital output protection technology authorized for such content in accordance with any applicable obligations established as a part of its approval pursuant to § 73.9008. Neither unscreened content nor marked content may be so passed in unencrypted, compressed form via a User Accessible Bus.

(b) The requirements of this section shall become applicable on July 1, 2005.

§ 73.9007 Robustness requirements for covered demodulator products.

The content protection requirements set forth in the demodulator compliance requirements shall be implemented in a reasonable method so that they cannot be defeated or circumvented merely by an ordinary user using generally-available tools or equipment. The requirements of this section shall become applicable on July 1, 2005.

Note to § 73.9007: Generally-available tools or equipment means tools or equipment that are widely available at a reasonable price, including but not limited to, screwdrivers, jumpers, clips and soldering irons. Generally-available tools or equipment also means specialized electronic tools or software tools that are widely available at a reasonable price, other than devices or technologies that are designed and made available for the specific purpose of bypassing or circumventing the protection technologies used to meet the requirements set forth in this subpart. Such specialized electronic tools or software tools includes, but is not limited to, EEPROM readers and writers, debuggers or decompilers.

§ 73.9008 Interim approval of authorized digital output protection technologies and authorized recording methods.

(a) *Certifications for digital output protection technologies and authorized recording methods.* The proponent of a specific digital output protection technology or recording method seeking approval for use in covered demodulator products shall certify to the Commission that such digital output protection technology or recording method is appropriate for use in covered demodulator products to give effect to the broadcast flag. Such certification shall include the following information:

(1) A general description of how the digital output protection technology or recording method works, including its scope of redistribution;

(2) A detailed analysis of the level of protection the digital output protection technology or recording method affords content;

(3) Information regarding whether content owners, broadcasters or equipment manufacturers have approved or licensed the digital output protection technology or recording method for use; and

(4) If the technology is to be offered publicly, a copy of its licensing terms, and fees, as well as evidence demonstrating that the technology will be licensed on a reasonable, non-discriminatory basis.

(5) If any of the information is proprietary in nature, the proponent may seek confidential treatment of the proprietary portion of their certification pursuant to § 0.459 of this chapter.

(b) *Initial certification window.* Following the effective date of this subpart, the Commission shall issue a public notice commencing an initial certification window for digital output protection technologies or recording methods. Within thirty (30) days after the date of this public notice, proponents of digital output protection technologies or recording methods may file certifications pursuant to paragraph (a) of this section. Following close of the initial certification window, the Commission shall issue a public notice identifying the certifications received and commencing an opposition window. Within twenty (20) days after the date of this public notice, oppositions may be filed with respect to a certification.

(1) If no objections are received in response to a proponent's certification within the twenty (20) day opposition window, the Commission shall expeditiously issue a determination indicating whether the underlying digital output protection technology or recording method is approved for use with covered demodulator products.

(2) If an objection is raised within the twenty (20) day opposition window alleging that a proponent's certification contains insufficient information to evaluate the appropriateness of the underlying digital output protection technology or recording method for use with covered demodulator products, the proponent may file a reply within 10 days after the close of the twenty (20) day opposition window. The Commission shall determine whether to dismiss the certification without prejudice or to undertake a full review of the certification's merits pursuant to paragraph (d) of this section.

(3) If an objection is raised within the twenty (20) day opposition window alleging that a proponent's digital output protection technology or recording method is inappropriate for use with covered demodulator products, the Commission shall undertake a full review of the associated certification's merits pursuant to paragraph (d) of this section. The proponent may file a reply within 10 days after the close of the twenty (20) day opposition window. In such cases, the Commission shall issue a determination indicating whether the underlying digital output protection technology or recording method is approved for use with covered demodulator products.

(c) *Effect of subsequent certifications.* Where a proponent of a digital output protection technology or recording method files a certification pursuant to paragraph (a) of this section subsequent to the initial certification window described in paragraph (b) of this section:

(1) If no objections are received in response to a proponent's certification within twenty (20) days after the date of public notice of the filing of such certification, the Commission shall expeditiously issue a determination indicating whether the underlying digital output protection technology or

recording method is approved for use with covered demodulator products.

(2) If an objection is raised within twenty (20) days after the date of public notice of the filing of a proponent's certification alleging that such certification contains insufficient information to evaluate the appropriateness of the underlying digital output protection technology or recording method for use with covered demodulator products, the proponent may file a reply within 10 days after the close of the twenty (20) day opposition window. The Commission shall determine whether to dismiss the certification without prejudice or to undertake a full review of the certification's merits pursuant to paragraph (d) of this section.

(3) If an objection is raised within twenty (20) days after the date of public notice of the filing of a proponent's certification alleging that the underlying digital output protection technology or recording method is inappropriate for use with covered demodulator products, the proponent may file a reply within 10 days after the close of the twenty (20) day opposition window. The Commission shall undertake a full review of the certification's merits pursuant to paragraph (d) of this section. In such cases, the Commission shall issue a determination indicating whether the underlying digital output protection technology or recording method is approved for use with covered demodulator products.

(d) *Commission determinations.* Where the Commission undertakes a full review of the merits of a certification for a digital output protection technology or recording method, the Commission may consider, where applicable, the following factors:

(1) Technological factors including but not limited to the level of security, scope of redistribution, authentication, upgradability, renewability, interoperability, and the ability of the digital output protection technology to revoke compromised devices;

(2) The applicable licensing terms, including compliance and robustness rules, change provisions, approval procedures for downstream transmission and recording methods, and the relevant license fees;

(3) The extent to which the digital output protection technology or recording method accommodates consumers' use and enjoyment of unencrypted digital terrestrial broadcast content; and

(4) Any other relevant factors the Commission determines warrant consideration.

(e) *Revocation of approval.* (1) If the security of a content protection technology or recording method approved for use in covered demodulator products has been compromised, a person may seek revocation of such approval pursuant to § 76.7 of this chapter.

(2) Petitioners seeking revocation of a content protection technology or recording method's approval for use in covered demodulator products shall articulate in detail the extent to which the content protection or recording technology has been compromised and demonstrate why alternative measures are insufficient to address the breach in security.

§ 73.9009 Manufacture for exportation.

The requirements of this subpart do not apply to demodulators, covered demodulator products or peripheral TSP products manufactured in the United States solely for export.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 4. The authority citation for part 76 continues to read as follows:

Authority 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 571, 572, and 573.

■ 5. Add new § 76.1909 to read as follows:

§ 76.1909 Redistribution control of unencrypted digital terrestrial broadcast content.

(a) For the purposes of this section, the terms unencrypted digital terrestrial broadcast content, EIT, PMT, broadcast flag, covered demodulator product, and marked content shall have the same meaning as set forth in § 73.9000 of this chapter.

(b) *Encrypted Retransmission.* Where a multichannel video programming distributor retransmits unencrypted digital terrestrial broadcast content in encrypted form, such distributor shall, upon demodulation of the 8–VSB, 16–VSB, 64–QAM or 256–QAM signal, inspect either the EIT or PMT for the broadcast flag, and if the broadcast flag is present:

(1) Securely and robustly convey that information to the consumer product used to decrypt the distributor's signal information, and

(2) Require that such consumer product, following such decryption, protect the content of such signal as if it were a covered demodulator product receiving marked content.

(c) *Unencrypted Retransmission.* Where a multichannel video programming distributor retransmits unencrypted digital terrestrial broadcast content in unencrypted form, such distributor shall, upon demodulation:

(1) Preserve the broadcast flag, if present, in both the EIT and PMT; and

(2) Use 8–VSB, 16–VSB, 64–QAM, or 256–QAM signal modulation for the retransmission.

(d) *Unmarked Content.* Where a multichannel video programming distributor retransmits unencrypted digital terrestrial broadcast content that is not marked with the broadcast flag, the multichannel video programming distributor shall not encode such content to restrict its redistribution.

[FR Doc. 03–30007 Filed 12–2–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. ; 031022265–3293–02; I.D. 092203E]

RIN 0648–AQ93

International Fisheries; Pacific Tuna Fisheries

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

ACTION: Final rule; 2003 management measures for tuna purse seine fisheries in the Eastern Pacific Ocean.

SUMMARY: NMFS announces final 2003 management measures to prevent overfishing of eastern tropical Pacific Ocean (ETP) tuna stocks, consistent with recommendations by the Inter-American Tropical Tuna Commission (IATTC) that have been approved by the Department of State (DOS) under the Tuna Conventions Act. The purse seine fishery for tuna is prohibited in a portion of the Convention Area for the month of December, 2003. This action is taken to limit the impact of the purse seine fishery on bigeye tuna which are taken with yellowfin tuna in these waters and thus reduce the potential for overfishing.

DATES: The time and area closure is in effect from 0001 hours December 1, 2003, through 2400 hours December 31, 2003.

ADDRESSES: Copies of the regulatory impact review/regulatory analysis may

be obtained from the Southwest Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, 562–980–4040.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register**'s Web site at *http://www.access.gpo.gov/su-docs/aces/aces140.html*.

The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949. The IATTC was established to provide an international arrangement to ensure the effective international conservation and management of highly migratory species of fish in the Convention Area. The Convention Area is defined to include waters of the eastern tropical Pacific Ocean bounded by the coast of the Americas, the 40° N. and 40° S. parallels, and the 150° W. meridian.

Under the Tuna Conventions Act, NMFS publishes rules to carry out IATTC recommendations that have been approved by the Department of State (DOS). Under 50 CFR 300.29(b)(3), the Southwest Regional Administrator, NMFS, also issues direct notices to the owners or agents of all U.S. purse seine vessels that operate in the ETP of actions recommended by the IATTC and approved by the DOS.

At a meeting held on October 6–7, 2003, the IATTC agreed to a tuna fishery conservation and management measure for 2003. The IATTC agreed to recommend that purse seine fishing for tuna be prohibited in December 2003 in waters bounded by a line from the point where the 95° W. long. meridian intersects the west coast of the Americas, south to 10° S. lat., then W. to 120° W. long., then south to 5° S. lat., then east to 100° W. long., then north to 5° N. lat., then east to 85° W. long., and then north to the point of intersection with the west coast of the Americas. This approach should provide protection against overfishing of the stocks in a manner that is fair, equitable and readily enforceable. The DOS has approved this recommendation.

The recommended 2003 time/area closure is based on 2003 assessments of the condition of the tuna stocks in the ETP and historic catch and effort data for different portions of the eastern Pacific Ocean, as well as records relating to implementation of quotas and closures in prior years. The assessments indicate that the stocks are healthy. The closure is targeted to areas with high catches of bigeye tuna in the purse seine fishery and is believed by the IATTC scientific staff to be sufficient to reduce the risk of overfishing of that stock, especially when considered in combination with the measures recommended for 2004 and 2005 with respect to longline fishing. The 2004 measures, when implemented, will include a 6-week closure of all purse seine fisheries in the eastern Pacific Ocean beginning August 1, 2004, and limitation of longline fisheries to the bigeye tuna catch levels achieved in 2001. The IATTC will meet in June 2004 and review new tuna stock assessments and fishery information and will consider that new information in evaluating the need for management measures for 2005 and future years.

On October 10, 2003, the Acting Regional Administrator, Southwest Region, sent a notice to owners and agents of U.S. tuna purse seine fishing vessels of the actions that were recommended by the IATTC and have been approved by the DOS.

Comments and Responses

No comments were received during the comment period for the proposed rule (68 FR 63052, November 7, 2003), which ended November 19, 2003.

Classification

This action is authorized by the Tuna Conventions Act, 16 U.S.C. 951–961 and 971 *et seq.*

On December 8, 1999, NMFS prepared a biological opinion (BO) assessing the impacts of the fisheries as they would operate under the regulations (65 FR 47, January 3, 2000) implementing the International Dolphin Conservation Program Act (IDCPA). NMFS concluded that the fishing activities conducted under those regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. This final rule will not result in any changes in the fisheries such that there would be impacts beyond those considered in that BO. The IATTC has also taken action to reduce sea turtle injury and mortality from interactions in the purse seine fishery so impacts of the fisheries should be lower than in the past. Because this closure does not alter the scope of the fishery management regime analyzed in the IDCPA rule, or the scope of the impacts considered in that consultation, NMFS is relying on that analysis to conclude that this final rule will not likely jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. Therefore, NMFS has determined that additional consultation is not required for this action.

The eastern Pacific Ocean tuna purse seine fisheries occasionally interact with a variety of species of dolphin, and dolphin takes are authorized and managed under the IDCPA. These quotas do not affect the administration of that program, which is consistent with section 303(a)(2) of the Marine Mammal Protection Act (MMPA). Therefore, this rule is consistent with the MMPA.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule. No comments were received regarding the economic impacts of this action. As a result, no regulatory flexibility analysis was prepared.

The Assistant Administrator for Fisheries finds good cause,pursuant to 5 U.S.C. 553(d)(3) to waive the 30–day delay in the effective date of this final rule as failure to implement the closure as recommended by the IATTC could reduce the ability of the United States to promote full and complete compliance with IATTC recommendations by all parties as well as non-parties to the IATTC. This would jeopardize the continued effectiveness of the IATTC measures to conserve and manage the stocks under its purview.

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

Dated: November 28, 2003.

Rebecca Lent,

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

[FR Doc. 03–30132 Filed 11–28–03; 4:36 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021122284–2323–02; I.D. 111703A]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustments to the 2003 Scup and Black Sea Bass Total Allowable Landings (TAL)

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

ACTION: Notice of Restoration to the 2003 Scup and Black Sea Bass TAL.

SUMMARY: NMFS restores 18,665 lb (8,466 kg) of unused research set-aside (RSA) to the 2003 scup TAL and 25,000 lb (11,340 kg) of unused RSA to the black sea bass TAL, and makes corresponding adjustments to the 2003 scup Winter II commercial quota, the 2003 scup recreational harvest limit, the 2003 black sea bass coastwide commercial quota, and the 2003 black sea bass recreational harvest limit. This action complies with Framework Adjustment 1 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), which implemented procedures for setting aside up to 3 percent of the annual TAL to fund research activities for summer flounder, scup, and black sea bass. Framework Adjustment 1 also specified that, if a research proposal is disapproved by NMFS or the NOAA Grants Office, the research set-aside for that proposal would be reallocated (i.e., added back) into the TAL. In October 2003, NMFS identified two RSA projects that had significant quantities of allocation remaining that were not going to be used. These remaining amounts are being returned to their respective quotas to provide fishermen the opportunity to harvest the available quota.

DATES: Effective November 28, 2003.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn, Fishery Management Specialist, (978) 281–9326, fax (978) 281–9135, e-mail: *jason.blackburn@noaa.gov*

SUPPLEMENTARY INFORMATION:

Background

NMFS published a final rule in the **Federal Register** on August 10, 2001 (66 FR 42156), implementing Framework Adjustment 1 to the FMP. Framework Adjustment 1 implemented procedures for setting aside up to 3 percent of the annual TAL to fund research activities for summer flounder, scup, and black sea bass. Framework Adjustment 1 also specified that, if a proposal is disapproved by NMFS or the NOAA Grants Office, the research set-aside for that proposal would be reallocated (i.e., added back) into the TAL.

On January 2, 2003, NMFS published a final rule in the **Federal Register** (68 FR 60) announcing specifications for the 2003 summer flounder, scup, and black sea bass fisheries. An initial TAL of 16,500,000 lb (7,484,274 kg) was established for scup and an initial TAL of 6,800,000 lb (3,084,428 kg) was established for black sea bass. Three research projects utilizing the scup RSA quota and three research projects utilizing the black sea bass RSA quota were recommended for approval by a review committee. As a result, 66,650 lb (30,232 kg) of scup quota and 67,676 lb (30,697 kg) of black sea bass quota were set aside for these research projects. Therefore, TAL of 16,433,350 lb (7,454,042 kg) for scup and 6,732,324 (3,053,731 kg) for black sea bass were implemented for 2003 through the final rule. Under procedures in the FMP, the resulting scup overall TAL is allocated 78 percent to the commercial sector and 22 percent to the recreational sector, while the resulting black sea bass overall TAL is allocated 49 percent to the commercial sector and 51 percent to the recreational sector. This resulted in a scup 2003 commercial quota of 12,419,629 lb (5,633,449 kg), a scup 2003 recreational harvest limit of 4,013,721 lb (1,820,593 kg), a black sea bass 2003 commercial quota of 3,298,838 lb (1,496,328 kg), and a black sea bass 2003 recreational harvest limit of 3,433,485 lb (1,557,403 kg). Overages from 2002 were then deducted from the commercial quotas, and the 2003 adjusted quotas became 12,016,875 lb (5,450,763 kg) for scup and 3,002,034 lb (1,361,700 kg) for black sea bass.

NMFS further adjusted the scup and black sea bass commercial quotas on March 3, 2003 (68 FR 9905). This adjustment set the scup 2003 commercial quota (less the 2003 RSA) at 12,104,063 lb (5,490,311 kg), and the black sea bass 2003 commercial quota (less the 2003 RSA) at 3,012,295 lb (1,366,354 kg). The final rule implementing Amendment 13 to the FMP was published on March 4, 2003 (68 FR 10181). This amendment established an annual coastwide quota for black sea bass, which took the place of the quarterly system used previously. The black sea bass 2003 commercial quota remained unchanged.

In October 2003, NMFS identified two RSA projects that had significant quantities of allocation remaining when the projects were concluded. These remaining amounts are being returned to their respective quotas to provide fishermen the opportunity to harvest the available quota.One RSA project was allocated 20,000 lb (9,072 kg) of scup RSA, and had 18,665 lb (8,466 kg) remaining at the end of the project. This amount is being returned to the 2003 scup TAL. Another RSA project was allocated 25,000 lb (11,340 kg) of black sea bass RSA. This project was unable to be completed. The entire allocation is being returned to the 2003 black sea bass TAL.

This action restores 18,665 lb (8,466 kg) to the overall 2003 scup TAL. The resulting 2003 scup TAL is 16,452,015 lb (7,462,508 kg). Of the 18,665 lb (8,466 kg) being restored, 14,559 lb (6,604 kg) is added to the commercial quota and 4,106 lb (1,862 kg) is added to the recreational harvest limit. The resulting scup commercial quota is 12,118,622 (5,496,914 kg) and the recreational harvest limit is 4,017,827 lb (1,822,456 kg). This action also restores 25,000 lb (11,340 kg) to the overall 2003 black sea bass TAL. The resulting 2003 black sea bass TAL is 6,757,324 lb (3,065,071 kg). Of the 25,000 lb (11,340 kg) being restored, 12,250 lb (5,557 kg) is added to the commercial quota and 12,750 lb (5,783 kg) is added to the recreational harvest limit. The resulting black sea bass commercial quota is 3,024,545 lb (1,371,911 kg) and the recreational harvest limit is 3,446,235 lb (1,563,186 kg).

On November 3, 2003 (68 FR 62250), the scup 2003 Winter II period quota was revised to 3,852,739 lb (1,747,573 kg). Because the Winter I and Summer periods of the 2003 scup commercial fishing year have already closed, the entire portion of the additional commercial quota (14,559 lb (6,604 kg)) is being added to the Winter II period. The resulting adjusted 2003 scup commercial quota for the Winter II period is 3,867,298 lb (1,754,177 kg).

Although 4,106 lb (1,862 kg) of scup and 12,750 lb (5,783 kg) of black sea bass are being restored to their respective recreational harvest limits, this action does not alter the existing recreational management measures that have been established to ensure that the recreational harvest limit is not exceeded. For scup, a minimum fish size of 10 inches (25.4 cm), a 50–fish recreational possession limit, and an open season of January 1 through February 28, and July 1 through

November 30, will remain in effect. For black sea bass, a minimum fish size of 12 inches (30.5 cm), a 25–fish recreational possession limit, and an open season of January 1 through September 1, and September 16 through November 30, will remain in effect.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: November 26, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–30131 Filed 11–28–03; 4:36 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 232
Wednesday, December 3, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–47–AD]

RIN 2120–AA64

Airworthiness Directives; Goodrich Avionics Systems, Inc. TAWS8000 Terrain Awareness Warning System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede airworthiness directive (AD) 2003–13–08, which currently applies to all Goodrich Avionics Systems, Inc. (Goodrich) TAWS8000 terrain awareness warning systems (TAWS) that are installed on airplanes. AD 2003–13–08 currently requires you to inspect the TAWS installation and remove any TAWS where both the TAWS and any other device are connected to the same baro set potentiometer. AD 2003–13–08 also prohibits future installation of any TAWS8000 TAWS that incorporates hardware ''Mod None'', ''Mod A'', or ''Mod B''. This proposed AD is the result of omitting from AD 2003–13–08 a provision that prohibits reconfiguring an installed TAWS8000 TAWS after it passes the inspection unless it incorporates hardware ''Mod C''. This proposed AD would retain the actions of AD 2003–13–08 and would also prohibit future installation or reconfiguration of any TAWS8000 TAWS that does not incorporate hardware ''Mod C''. We are issuing this proposed AD to prevent the loading of the baro set potentiometer, which could result in an unacceptable altitude error. That condition could cause the pilot to make flight decisions that put the airplane in unsafe flight conditions.

DATES: We must receive any comments on this proposed AD by February 2, 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. 2003–CE–47AD, 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. 2003–CE–47–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 Goodrich Avionics Systems, Inc., 5353 52nd Street, SE, Grand Rapids, Michigan 49512–9704; telephone: (616) 949–6600; facsimile: (616) 977–6898. You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–47–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: Brenda S. Ocker, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7126; facsimile: (847) 294–7834.

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. 2003–CE–47–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

Has FAA taken any action to this point? Reports that the Goodrich TAWS8000 TAWS causes altitude errors in other instruments when both the TAWS and any other device are connected to the same baro set potentiometer caused us to issue AD 2003–13–08, Amendment 39–13208.

The unsafe condition was discovered during the installation of a TAWS8000 TAWS in a Cessna 500 series airplane. The TAWS8000 TAWS was connected to the baro set potentiometer output of a Honeywell (Sperry) BA–141 altimeter that was also connected to a Honeywell AZ–241 Air Data Computer. The altimeter showed that the aircraft was 60 feet higher than the actual altitude. This unsafe condition was confirmed with the laboratory test of a TAWS8000 TAWS installation.

What has happened since AD 2003–13–08 to initiate this proposed action? We omitted from AD 2003–13–08 a provision that prohibits reconfiguring an installed TAWS8000 TAWS after it passes the inspection unless it incorporates hardware ''Mod C'.

Since we issued AD 2003–13–08, Goodrich Avionics System, Inc. has also developed a production improvement (Mod C) to eliminate the effect of loading on the baro set potentiometer. Goodrich has issued an alert service bulletin to implement this modification.

We received comments about the language in AD 2003–13–08. Owners/operators are restricted from installing any TAWS8000 TAWS (part number 805–18000–001 that incorporates hardware ''Mod None'', ''Mod A'', or ''Mod B''). When the unit is modified to incorporate hardware ''Mod C'', the unit will still have ''Mod None'', ''Mod A'', or ''Mod B'' marked on it. The intent of the AD was to allow for hardware modifications other than ''Mod None'', ''Mod A'', or ''Mod B'' to be installed.

What are the consequences if the condition is not corrected? AD 2003–13–08, as currently written, could cause confusion as to how to incorporate the actions necessary in correcting the unsafe condition.

Is there service information that applies to this subject? Goodrich

Avionics Systems, Inc. has issued Service Memo SM #134, Revised July 9, 2003, and Alert Service Bulletin SB #A117, dated July 9, 2003.

What are the provisions of this service information? Goodrich Avionics Systems, Inc. Service Memo SM #134, Revised July 9, 2003, introduces the release of product improvement hardware ''Mod C'' and restates the following information from the original issue of Service Memo SM #134:

—The TAWS8000 should not be connected to a baro set potentiometer if that potentiometer is also connected to any other device; and

—In existing installations where both the TAWS and any other device are connected to the same baro set potentiometer, the TAWS8000 should be removed from the aircraft.

Goodrich Avionics Systems, Inc. Alert Service Bulletin SB #A117, dated July 9, 2003, specifies upgrading all TAWS8000 units to include hardware ''Mod C''.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? The FAA has reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on type design airplanes equipped with a Goodrich TAWS8000 TAWS, P/N 805–18000–001 that does not incorporate hardware ''Mod C'';

—Any airplane with one of these TAWS8000 TAWS units, P/N 805–18000–001 should have the actions specified in the above service information incorporated; and

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

What would this proposed AD require? This proposed AD would supersede AD 2003–13–08 with a new AD that proposes to require you to inspect the TAWS installation and modify any TAWS where both the TAWS and any other device are connected to the same baro set potentiometer. This proposed AD would also prohibit future installation or reconfiguration of any TAWS8000 TAWS that does not incorporate hardware ''Mod C''.

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 80 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
1 workhour × $65 = $65	Not applicable	$65	65 × 80 = $5,200

We estimate the following costs to accomplish any necessary modifications that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need the modification:

Labor cost	Parts cost	Total cost per airplane
2 workhours × $65 = $130 (1 workhour to remove and 1 workhour to replace).	All units will be modified at the Goodrich Avionics Systems facility under warranty.	$130

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. 2003–CE–47–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 removing Airworthiness Directive (AD) 2003–13–08, Amendment 39–13208 (68 FR 38586, June 30, 2003), and by adding a new AD to read as follows:

Goodrich Avionics Systems, Inc.: Docket No. 2003–CE–47–AD; Supersedes AD 2003–13–08, Amendment 39–13208.

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 February 2, 2004.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 2003–13–08, Amendment 39–13208.

What Airplanes Are Affected by This AD?

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

(1) Are certificated in any category; and

(2) Incorporate any Goodrich TAWS8000 terrain awareness warning system (TAWS), part number (P/N) 805–18000–001, that incorporates hardware ''Mod None'', ''Mod A'', or ''Mod B'', and is installed in, but not limited to, the following airplanes. Airplanes that are not in this list and have the TAWS installed through field approval or other methods are still affected by this AD:

Company	Models
Cessna Aircraft Company	421, 500, 501, 525, 525A, 550, 551, 650, and S550.
DASSAULT AVIATION	Mystere-Falcon 20 series.
Gulfstream Aerospace LPN	1125 Westwind Astra.
Raytheon Aircraft Company	100, 200, 300, 400A, and F90.
Sabreliner Corporaiton	NA–265.
The New Piper Aircraft Inc.	PA–42–1000.

What Is the Unsafe Condition Presented in This AD?

(d) The actions specified by this AD are intended to prevent the loading of the baro set potentiometer, which could result in an unacceptable altitude error. This condition could cause the pilot to make flight decisions that put the airplane in unsafe flight conditions.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspect the TAWS8000 TAWS (part number 805–18000–001 that incorporates hardware ''Mod None'', ''Mod A'', or ''Mod B'') installation to determine if both the TAWS8000 TAWS and any other device are connected to the same baro set potentiometer.	Within the next 5 hours time-in-service (TIS) after July 21, 2003 (the effective date of AD 2003–13–08), unless already accomplished.	Follow Goodrich Avionics Systems, Inc. Service Memo SM #134, dated May 2, 2003, and the applicable installation manual.
(2) If both the TAWS8000 TAWS and any other device are connected to the same baro set potentiometer, remove the TAWS8000 TAWS and cap and stow the connecting wires or replace the TAWS8000 TAWS unit with a unit that incorporates hardware ''Mod C''.	Before further flight after the inspection required in paragraph (d)(1) of this AD.	Follow Goodrich Avionics Systems, Inc. Service Memo SM #134, dated May 2, 2003, and the applicable installation manual.
(3) Do not install or reconfigure any TAWS8000 TAWS (part number 805–18000–001) that does not incorporate hardware ''Mod C''.	As of the effective date of this AD	Not Applicable.

May I Request an Alternative Method 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.

(1) Send your request to the Manager, Chicago Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Brenda S. Ocker, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7126; facsimile: (847) 294–7834.

(2) Alternative methods of compliance approved in accordance with AD 2003–13–08, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from Goodrich Avionics Systems, Inc., 5353 52nd Street, SE, Grand Rapids, Michigan 49512–9704; telephone: (616) 949–6600; facsimile: (616) 977–6898. 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 25, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30074 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–178–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), which is applicable to all Model EMB–135 and –145 series airplanes. That AD currently requires repetitive inspections to detect discrepancies of both vertical-to-horizontal stabilizer bonding jumpers

and the connecting support structure, and corrective action if necessary. This action would require modification of the bonding jumpers, including the installation of a protective cover to the elevator control cables, which would terminate the requirements of the existing AD. The actions specified by the proposed AD are intended to prevent damaged or severed bonding jumpers, which, in the event of a lightning strike, could result in severed elevator control cables and consequent reduced elevator control capability and reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–178–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–178–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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. 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–178–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–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 13, 2001, the FAA issued AD 2001–17–04, amendment 39–12395 (66 FR 43678, August 21, 2001). That AD was superseded by AD 2002–08–21, amendment 12733 (67 FR 21572, May 1, 2002).

AD 2002–08–21 applies to all EMBRAER Model EMB–135 and –145 series airplanes. That AD requires repetitive inspections to detect discrepancies of both vertical-to-horizontal stabilizer bonding jumpers and the connecting support structure; and corrective action, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by the Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil. The requirements of AD 2002–08–21 are intended to prevent damaged or severed bonding jumpers, which, in the event of a lightning strike, could result in severed elevator control cables and consequent reduced elevator control capability and reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

The preamble to AD 2002–08–21 explains that we consider those requirements ''interim action'' until we identify final action. We now have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Explanation of Relevant Service Information

AD 2002–08–21 cites the original issue of EMBRAER Service Bulletin 145–55–0028, dated April 10, 2002, as the appropriate source of service information for accomplishment of the repetitive inspections of paragraph (f) of AD 2002–08–21. Change 02 of the service bulletin, dated February 27, 2003, includes corrections of certain in-production effectivity and part number information, but doesn't change the procedures. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2001–06–03R2, dated June 24, 2002, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2002–08–21 to continue to require repetitive inspections to detect discrepancies of both vertical-to-horizontal stabilizer bonding jumpers and the connecting support structure; and corrective action if necessary. The proposed AD would also require

modification of the bonding jumpers, including the installation of a protective cover to the elevator control cables, which would terminate the requirements of the existing AD. The proposed AD would remove the existing reporting requirement. The actions would be required to be accomplished in accordance with EMBRAER Service Bulletins 145–55–0025 and 145–55–0028, described previously.

Explanation of Changes Made to Existing AD

We have changed all references to a ''detailed visual inspection'' in the existing AD to ''detailed inspection'' in this proposed AD.

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 360 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 2002–08–21 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $46,800, or $130 per airplane, per inspection cycle.

The terminating action proposed in this AD action would take approximately 6 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost approximately $206 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $214,560, or $596 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12733 (67 FR 21572, May 1, 2002), and by adding a new airworthiness directive (AD), to read as follows:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2002–NM–178–AD. Supersedes AD 2002–08–21, Amendment 39–12733.

Applicability: All Model EMB–135 and –145 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent damaged or severed bonding jumpers, which, in the event of a lightning strike, could result in severed elevator control cables and consequent reduced elevator control capability and reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 2002–08–21

Inspection of the Bonding Jumpers

(a) For airplanes subject to the requirements of AD 2001–17–04, amendment 39–12395 (which was superseded by AD 2002–08–21, amendment 12733): Except as provided by paragraph (f) of this AD, within the next 100 flight hours after September 5, 2001 (the effective date of AD 2001–17–04), perform a detailed inspection to determine if the two bonding jumpers that connect the horizontal to the vertical stabilizers are properly installed, per EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001.

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.''

Follow-On Action

(b) For airplanes subject to the requirements of paragraph (a) of this AD: If both bonding jumpers are installed properly, before further flight, determine if the jumpers are mechanically tensioned to a slack distance of 5 millimeters (mm) or less between the reference line and the jumper as specified in View E of EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001.

(1) If any slack distance is 5 mm or less, before further flight, replace the bonding jumper with a new jumper having part number (P/N) LN926416X165, per the alert service bulletin.

(2) If any slack distance is 6 mm or more, at the time specified in paragraph (d) of this AD, accomplish those actions specified in paragraph (d) of this AD.

Corrective Actions

(c) For airplanes subject to the requirements of paragraph (a) of this AD: If either bonding jumper is not installed properly (*e.g.*, misaligned, signs of previous elongation, or damage), before further flight, replace the bonding jumper with a new jumper having P/N LN926416X165, per EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001.

Inspection of the Connecting Supports

(d) For airplanes subject to the requirements of AD 2001–17–04: Within the next 100 flight hours after September 5, 2001, perform a detailed inspection to determine if the supports that connect the bonding jumpers to the horizontal stabilizers are deformed, cracked, or ruptured; per EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001.

(1) If no deformation is detected, no further action is required by this paragraph.

(2) If any connecting support having deformation of 30 degrees or less has any sign of a painting discrepancy, before further flight, repaint the support per the alert service bulletin. The support must remain in the position it was found, as specified in the alert service bulletin.

(3) If any connecting support is deformed above 30 degrees or any signs of cracking or ruptures are detected, before further flight, replace the connecting support with a new support per the alert service bulletin.

(e) For airplanes subject to the requirements of AD 2001–17–04: If the inspection required by paragraph (f) of this AD is performed before the inspections specified in paragraphs (a) and (d) of this AD, it is not necessary to perform the inspections specified in paragraphs (a) and (d) of this AD.

Repetitive Inspections

(f) For all airplanes: Except as required by paragraphs (h) and (i) of this AD, within 100 flight hours after May 16, 2002 (the effective date of AD 2002–08–21), perform a detailed inspection as specified in paragraphs (f)(1) and (f)(2) of this AD, per EMBRAER Alert Service Bulletin 145–55–A028, dated April 10, 2002; or Change 02, dated February 27, 2003. If any discrepancy is found during any inspection required by this paragraph: Before further flight, perform applicable corrective actions (including replacing any discrepant part with a new part and restoring the support painting) per the alert service bulletin. Repeat the inspection at intervals not to exceed 800 flight hours, except as provided by paragraphs (h) and (i) of this AD.

(1) Inspect both bonding jumpers of the vertical-to-horizontal stabilizer to detect discrepancies (including overstretching, fraying, or other damage; and misaligned or otherwise incorrectly installed bonding jumper terminals).

(2) Inspect the connecting support structure to detect deformation or signs of cracks or ruptures, and, before further flight, inspect the general conditions of the paint of any discrepant support.

(g) Inspections done before the effective date of this AD per EMBRAER Service Bulletin 145–55–A028, Change 01, dated June 7, 2002, are acceptable for compliance with the requirements of paragraph (f) of this AD.

Conditional Requirements for Immediate Inspection

(h) Notwithstanding the requirements of paragraph (f) of this AD: Before further flight following removal of any parts identified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, perform the inspection specified in paragraph (f) of this AD. The task numbers below are identified in EMBRAER Aircraft Maintenance Manuals AMM–145/1124 and AMM–145/1230.

(1) The horizontal stabilizer (as specified in EMBRAER Airplane Maintenance Manual (AMM) task number 55–10–00–000–801–A).

(2) The horizontal stabilizer actuator (as specified in AMM task number 27–40–02–000–801–A).

(3) The left-hand or right-hand seal fairings (as specified in AMM task number 55–36–00–020–002–A00).

(i) Before further flight following a lightning strike, perform a ''Lightning Strike—Inspection Check'' and applicable corrective actions, per AMM task number 05–50–01–06.

Note 2: Following accomplishment of an inspection per paragraph (h) or (i) of this AD, the repetitive interval of the next inspection may be extended to 800 flight hours after accomplishment of the inspection required by paragraph (h) or (i) of this AD, as applicable.

New Requirements of This AD

Terminating Action

(j) Within 800 flight hours after the effective date of this AD, modify the bonding jumpers, including installing a protective cover for the elevator control cables, in accordance with Part II of the Accomplishment Instructions of EMBRAER Service Bulletin 145–55–0028, Change 02, dated February 27, 2003. Accomplishment of this modification terminates the requirements of this AD.

(k) A modification done before the effective date of this AD per EMBRAER Service Bulletin 145–55–0028, Change 01, dated June 7, 2002, is acceptable for compliance with the requirements of paragraph (j) of this AD.

Alternative Methods of Compliance

(l) 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 3: The subject of this AD is addressed in Brazilian airworthiness directive 2001–06–03R2, dated June 24, 2002.

Issued in Renton, Washington, on November 26, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30116 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–93–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 and 747–400D 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 747–400 and 747–400D series airplanes. This proposal would require a detailed inspection of the fire extinguishing system tube and clamp for correct installation or a repetitive pressure test of the fire extinguishing system tube for leakage, and corrective action, if necessary. This action is necessary to prevent a chafed hole in the fire extinguishing system tube of the aft cargo compartment, which could result in a lack of fire extinguishing agent and consequent uncontained fire in the aft cargo compartment. 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–93–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–93–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: Barbara Mudrovich, Aerospace Engineer, Cabin Safety & Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6477; 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 200–NM–93–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–93–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of a chafed hole in the fire extinguishing system tube of the aft cargo compartment on a Boeing Model 747–400 series airplane. During production, the tube was installed incorrectly with the bend down and clamps upside down, which can cause the tube to chafe against a stiffener on the air conditioning duct located below the tube. If the discharge tube has a chafed hole, there may not be a sufficient amount of fire extinguishing agent to extinguish a fire in the aft cargo compartment. This condition, if not corrected, could result in an uncontained fire in the aft cargo compartment.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–26A2270, Revision 1, dated January 16, 2003, which describes the following procedures:

- Performing a detailed inspection of the fire extinguishing system tube and clamps for correct installation, either using an inspection hole and boroscope or with the floor panel removed;
- Performing a repetitive pressure test of the fire extinguishing system tube for leakage; and
- Performing corrective actions, if necessary.

The corrective actions include the following procedures:

- Performing a detailed inspection of the fire extinguishing system tube for chafing/damage;
- Replacing the fire extinguishing system tube with a new tube;
- Repairing the fire extinguishing system tube; and
- Installing the new or repaired fire extinguishing system tube.

Accomplishment of the Part 1—Option 1 or 2 inspections or the Part 2 inspection and repair/replacement in the service bulletin constitutes terminating action for the repetitive pressure test. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Cost Impact

There are approximately 416 airplanes of the affected design in the worldwide fleet. The FAA estimates that 44 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 inspection or pressure test, 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 $2,860, or $65 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2003–NM–93–AD.

Applicability: Model 747–400 and 747–400D series airplanes, as listed in Boeing Service Bulletin 747–26A2270, Revision 1, dated January 16, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a chafed hole in the fire extinguishing system tube of the aft cargo compartment, which could result in a lack of

fire extinguishing agent and consequent uncontained fire in the aft cargo compartment, accomplish the following:

Service Bulletin References

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin 747–26A2270, Revision 1, dated January 16, 2003.

Inspection/Pressure Test

(b) Within 6,500 flight hours or 18 months after the effective date of this AD, whichever occurs first, perform the detailed inspection specified in paragraph (b)(1) of this AD or the pressure test specified in paragraph (b)(2) of this AD.

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

(1) Perform a detailed inspection of the fire extinguishing system tube and clamps for correct installation, either using an inspection hole and boroscope or with the floor panel removed, per the service bulletin.

(i) If the fire extinguishing system tube is installed correctly, no further action is required by this AD.

(ii) If the fire extinguishing system tube is installed incorrectly, prior to further flight, do the actions specified in paragraph (c) of this AD.

(2) Perform a pressure test of the fire extinguishing system tube to check for leakage of the fire extinguishing agent per the service bulletin.

(i) If leakage is not found, repeat the pressure test thereafter at intervals not to exceed 6,500 flight hours or 18 months, whichever occurs first, until the actions specified in paragraph (b)(1) or (c) of this AD have been done.

(ii) If any leakage is found, prior to further flight, do the actions specified in paragraph (c) of this AD.

Removal and Installation/Repair/Replace

(c) Remove the fire extinguishing system tube and do the actions in paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) If, during the detailed inspection specified in paragraph (b)(1) of this AD, the fire extinguishing system tube was found to be installed incorrectly: Prior to further flight, perform a detailed inspection of the fire extinguishing system tube for chafing/damage per the service bulletin.

(i) If no chafing/damage is found, prior to further flight, install the existing fire extinguishing system tube per Figure 3 of the service bulletin.

(ii) If any chafing/damage is found, prior to further flight, replace the fire extinguishing system tube with a new tube or repair the fire extinguishing system tube, per the service bulletin, and install the new or repaired tube per Figure 3 of the service bulletin.

(2) If, during the pressure test required by paragraph (b)(2) of this AD, leakage was found: Prior to further flight, replace the fire extinguishing system tube with a new tube or repair the fire extinguishing system tube, per the service bulletin, and install the new or repaired tube per Figure 3 of the service bulletin.

Terminating Action

(d) Accomplishment of the actions specified in paragraph (b)(1) or (c) of this AD constitutes terminating action for the requirements of this AD.

Actions Accomplished Per Previous Issue of Service Bulletin

(e) Inspections, repetitive tests and corrective actions accomplished before the effective date of this AD per Boeing Alert Service Bulletin 747–26A2270, dated May 8, 2002, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(f) 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 26, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30115 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–60–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–15, DC–9–31, and DC–9–32 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–15, DC–9–31, and DC–9–32 airplanes. This proposal would require repetitive visual and x-ray inspections to detect cracks of the upper and lower corners and upper center of the door cutout of the aft pressure bulkhead; corrective actions, if necessary; and follow-on actions. For certain airplanes, the proposal also would require modification of the ventral aft pressure bulkhead. This action is necessary to detect and correct fatigue cracks in the corners and upper center of the door cutout of the aft pressure bulkhead, which could result in rapid decompression of the fuselage and consequent reduced structural integrity 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–60–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–60–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–60–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–60–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that the repetitive x-ray inspections required by AD 85–01–02 R1, amendment 39–5241 (51 FR 6101, February 20, 1986), do not adequately detect fatigue cracks in all layers of a repaired or modified aft pressure bulkhead on certain Model DC–9 airplanes. Fatigue cracks in the corners and upper center of the door cutout of the aft pressure bulkhead, if not detected and corrected, could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Related Rulemaking

The FAA normally would issue an AD to supersede AD 85–01–02 R1 to continue to require the existing requirements, until the new proposed actions that address the identified unsafe condition are done. This involves restating the existing requirements of AD 85–01–02 R1 in the new AD. Because of the complexity of the requirements of AD 85–01–02 R1, we previously issued AD 2002–07–06 as a ''stand—alone'' AD that did not supersede AD 85–01–02 R1. We included a paragraph in AD 2002–07–06 that terminates the repetitive inspection requirements of AD 85–01–02 R1.

AD 2002–07–06, amendment 39–12700 (67 FR 16987, April 9, 2002), is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 airplanes. That AD requires repetitive visual and x-ray inspections to detect cracks of the upper and lower corners and upper center of the door cutout of the aft pressure bulkhead; corrective actions, if necessary; and follow-on actions. The actions specified by that AD are intended to detect and correct fatigue cracks in the corners and upper center of the door cutout of the aft pressure bulkhead which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Other Related Rulemaking

The FAA also has previously issued AD 96–10–11, amendment 39–9618 (61 FR 24675, May 16, 1996), applicable to McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes. That AD requires certain inspections and structural modifications. Accomplishment of the modification (reference Boeing (McDonnell Douglas) Service Bulletin DC9–53–166) required by paragraph (d) or (e) of AD 96–10–11 (which references ''DC–9/MD–80 Aging Aircraft Service Action Requirements Document'' (SARD), McDonnell Douglas Report No. MDC K1572, Revision A, dated June 1, 1990, or Revision B, dated January 15, 1993, as the appropriate source of service information for accomplishing the modification) terminates the repetitive inspection requirements of paragraphs (b) and (c) of this proposed AD.

Explanation of Applicability

Since issuance of AD 2002–07–06, the FAA was advised that 13 Model DC–9–15, DC–9–31, and DC–9–32 airplanes (manufacturer's fuselage numbers 0030, 0094, 0220, 0221, 0863, 0900, 0901, 0913, 0914, 0918, 0923, 0926, and 0930) were excluded inadvertently from the effectivity of paragraph 1.A. of McDonnell Douglas Service Bulletin DC9–53–137, Revision 07, dated February 6, 2001, which was referenced in the applicability of that AD as the appropriate source of service information for determining the affected airplanes. Therefore, we have determined that the additional airplanes are also subject to the same unsafe condition addressed in AD 2002–07–06. This proposed AD follows from that determination.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003, which describes procedures that are essentially the same as those procedures included in McDonnell Douglas Service Bulletin DC9–53–137, Revision 07, dated February 6, 2001, as cited in AD 2002–07–06. This revision also adds 13 additional airplane fuselage numbers to the effectivity. The airplanes were inadvertently omitted from Revision 07 of the service bulletin. No more work is necessary on airplanes changed as shown in Revision 07 of the service bulletin.

The FAA also has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 53–165, Revision 3, dated May 3, 1989, which describes procedures for modification of the ventral aft pressure bulkhead structure (including cutting and removing flange of the upper; cutting and removing the lower flange of formers and replacing it with a clip; installing pads at the outboard end clips of formers; and replacing clearance fit bolts at the upper corner doubler angles with interference fit Hi-Lok pins and monel rivets).

In addition, the FAA has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 53–157, Revision 1, dated January 7, 1985, which describes, for certain airplanes, procedures for modification of the ventral aft pressure bulkhead (including encapsulating the head and nut of the attachments and applying a fillet seal of sealant around parts located on the forward and aft sides of the aft pressure bulkhead; and applying a soft film corrosion inhibiting compound to the forward and aft sides of the aft pressure bulkhead). For certain airplanes, these procedures must be done in conjunction with those in McDonnell Douglas DC–9 Service Bulletin 53–165.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Accomplishment of the actions specified in AD 2002–07–06 is acceptable for compliance with the requirements of this proposed AD.

FAA's Determination

The FAA finds that if, after the effective date of this AD, the airplane is operated without cabin pressurization and a placard that prohibits operation with cabin pressurization is installed in the cockpit in full view of the pilot, the inspections and modification specified in the service bulletins described previously are not necessary.

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 bulletins described previously, except as discussed below.

Since this AD expands the applicability of AD 2002–07–06, the FAA has considered a number of factors in determining whether to issue a new AD or to supersede the ''old'' AD. The FAA has considered the entire fleet size that would be affected by superseding AD 2002–07–06 and the consequent workload associated with revising maintenance record entries. In light of this, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to the additional airplanes. This proposed AD would not supersede AD 2002–07–06 or AD 85–01–02 R1; airplanes listed in the applicability of AD 2002–07–06 and AD 85–01–02 R1 are required to continue to comply with the requirements of those ADs. This proposed AD is a separate AD action, and is applicable only to the McDonnell Douglas Model DC–9–15, DC–9–31, and DC–9–32 airplanes, manufacturer's fuselage numbers 0030, 0094, 0220, 0221, 0863, 0900, 0901, 0913, 0914, 0918, 0923, 0926, and 0930. Once the final rule has been issued and it becomes effective, we plan to rescind AD 85–01–02 R1.

Differences Between the Proposed AD and a Certain Referenced Service Bulletin

McDonnell Douglas DC–9 Service Bulletin 53–165, Revision 3, dated May 3, 1989; and McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003; recommend compliance times with only a ''threshold'' (*i.e.*, before the airplane accumulates 15,000 total landings, within 15,000 landings after the bulkhead modification, and at the earliest practical maintenance period feasible on airplanes that have accumulated more than 15,000 landings, respectively). These service bulletins do not provide a ''grace period'' for airplanes that have already reached (or will soon reach) the 15,000-landing threshold, which would result in some airplanes being in immediate non-compliance with the rule upon reaching the stated number of landings. Therefore, the compliance times specified in paragraphs (a), (d)(1), and (d)(2) of this proposed AD include a grace period of ''within 4,000 landings after the effective date of this AD.'' The FAA finds such a grace period for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators should note that, although the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003, describe procedures for reporting results of inspections, this proposed AD would not require those actions. The FAA does not need this information from operators.

Cost Impact

There are 13 airplanes of the affected design in the worldwide fleet. The FAA estimates that seven airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 5 work hours per airplane to accomplish the proposed inspections, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,275 or $325 per airplane.

For certain airplanes, it would take approximately between 21 and 26 work hours per airplane depending on the airplane configuration to accomplish the proposed modification specified in McDonnell Douglas DC–9 Service Bulletin 53–165, Revision 3, dated May 3, 1989, at an average labor rate of $65 per work hour. Required parts would cost approximately between $3,470 and $11,831 per airplane, depending on the airplane configuration. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be between $4,835, or $13,521 per airplane.

For certain airplanes, it would take approximately 9 work hours per airplane to accomplish the proposed modification specified in McDonnell Douglas DC–9 Service Bulletin 53–157, Revision 1, dated January 7, 1985, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be $585 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2003–NM–60–AD

Applicability: Model DC–9–15, DC–9–31, and DC–9–32 airplanes, manufacturer's fuselage numbers 0030, 0094, 0220, 0221, 0863, 0900, 0901, 0913, 0914, 0918, 0923, 0926, and 0930; certificated in any category; equipped with a floor level hinged (ventral) door of the aft pressure bulkhead; as listed in McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003; except for those airplanes on which the modification required by paragraph (d) or (e) of AD 96–10–11, amendment 39–9618, or paragraph K of AD 85–01–02 R1, amendment 39–5241, has been done.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracks in the corners and upper center of the door cutout of the aft pressure bulkhead, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Visual and X-Ray Inspection

(a) For airplanes on which the modification has not been accomplished per paragraph (i) of this AD: Except as provided by paragraph (j) of this AD, prior to the accumulation of 15,000 total landings, or within 4,000 landings after the effective date of this AD, whichever occurs later, do a visual inspection and an x-ray inspection to detect cracks of the upper and lower corners and upper center of the door cutout of the aft pressure bulkhead, per the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003.

No Crack Detected: Repetitive Inspections

(b) If no crack is detected during any inspection required by paragraph (a) of this AD, do the action specified in either paragraph (b)(1) or (b)(2) of this AD per the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003, as applicable.

(1) If interim prevention repairs have been performed per the service bulletin; AD 85–01–02 R1, or AD 96–10–11: Do a visual inspection and an eddy current inspection at the times specified in the service bulletin. Repeat the applicable repetitive inspections thereafter at intervals not to exceed the times specified in the service bulletin, until accomplishment of the action required by paragraph (d) or (i) of this AD.

(2) If interim preventive repairs have not been performed per the service bulletin, do either paragraph (b)(2)(i) or (b)(2)(ii) of this AD:

(i) Before further flight, install an interim preventive repair identified in Conditions I through XLIII inclusive, excluding Conditions XXI, XXXVII, and XXXVIII (not used at this time), per the service bulletin. At the times specified in the service bulletin, do a visual inspection and an eddy current inspection. At intervals not to exceed the times specified in the service bulletin, repeat the visual and eddy current inspections until accomplishment of the action specified in paragraph (d) or (i) of this AD; or

(ii) At intervals not to exceed the times specified in the service bulletin, repeat the visual inspection and x-ray inspection required by paragraph (a) of this AD, until accomplishment of the action specified in paragraph (d) or (i) of this AD.

Any Crack Detected: Corrective Actions and Repetitive Inspections

(c) If any crack is detected during any inspection required by paragraph (a) or (b) of this AD, do the actions specified in paragraphs (c)(1) and (c)(2) of this AD per the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003.

(1) Before further flight, do the applicable corrective actions (*i.e.*, modification of the bulkhead; trim forward facing flange; stop drill ends of cracks; install repair kit; replacement of cracked part with new parts; and install additional doublers) identified in Conditions I through XLIII inclusive, excluding Conditions XXI, XXXVII, and XXXVIII (not used at this time), of the Accomplishment Instructions of the service bulletin; and

(2) At the times specified in the Accomplishment Instructions of the service bulletin, do the applicable repetitive inspections, until accomplishment of the action specified in paragraph (d) or (i) of this AD.

Concurrent Requirements

(d) Except as provided by paragraph (j) of this AD, modify the ventral aft pressure bulkhead structure by accomplishing all actions specified in the Accomplishment Instructions of McDonnell Douglas DC–9 Service Bulletin 53–165, Revision 3, dated May 3, 1989, per the service bulletin; at the applicable time specified in paragraph (d)(1), (d)(2), or (d)(3) of this AD.

(1) For airplanes on which the bulkhead modification specified in McDonnell Douglas DC–9 Service Bulletin 53–139, dated September 26, 1980; or Revision 1, dated April 30, 1981, has been done, except as provided by paragraph (d)(3) of this AD: Modify within 15,000 landings after accomplishment of the bulkhead modification, or within 4,000 landings after the effective date of this AD, whichever occurs later. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of paragraphs (b) and (c)(2) of this AD.

(2) For airplanes on which the production equivalent of the modification specified in paragraph (d)(1) of this AD has been done before delivery, except as provided by paragraph (d)(3) of this AD: Modify before the accumulation of 15,000 total landings, or within 4,000 landings after the effective date of this AD, whichever occurs later. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of paragraphs (b) and (c)(2) of this AD.

(3) For airplanes listed in McDonnell Douglas DC–9 Service Bulletin 53–165, Revision 3, dated May 3, 1989, that are specified in paragraph (f) of this AD: Modify in conjunction with the requirements of paragraph (f) of this AD, or within 18 months after accomplishment of the requirements of paragraph (f) of this AD.

(e) Modification before the effective date of this AD per McDonnell Douglas DC–9 Service Bulletin 53–165, dated January 31, 1983; Revision 1, dated February 20, 1984; or Revision 2, dated August 29, 1986; is considered acceptable for compliance with the requirements of paragraph (d) of this AD.

Modification: Ventral Aft Pressure Bulkhead

(f) For Model DC–9–30 and –50 series airplanes, and C–9 airplanes, as listed in McDonnell Douglas DC–9 Service Bulletin 53–157, Revision 1, dated January 7, 1985: Except as provided by paragraph (j) of this AD, within 18 months after the effective date of this AD, modify the ventral aft pressure bulkhead per the service bulletin.

(g) Modification before the effective date of this AD per McDonnell Douglas DC–9 Service Bulletin 53–157, dated August 11, 1981, is considered acceptable for compliance with the requirements of paragraph (f) of this AD.

Compliance With AD 85–01–02 R1

(h) Accomplishment of the visual and x-ray inspections required by paragraph (a) of this AD constitutes terminating action for the repetitive inspection requirements of AD 85–01–02 R1.

Terminating Modification

(i) Accomplishment of the modification (reference McDonnell Douglas DC–9 Service Bulletin 53–166) required by paragraph (d) or (e) of AD 96–10–11 (which references ''DC–9/MD–80 Aging Aircraft Service Action Requirements Document'' (SARD), McDonnell Douglas Report No. MDC K1572, Revision A, dated June 1, 1990; or Revision B, dated January 15, 1993; as the appropriate source of service information for accomplishing the modification) terminates the repetitive inspection requirements of paragraphs (b) and (c) of this AD.

Exception to Inspections and Modifications

(j) As of the effective date of this AD, the inspections and modifications required by this AD do not need to be done during any period that the airplane is operated without cabin pressurization and a placard is installed in the cockpit in full view of the pilot that states the following:

''OPERATION WITH CABIN PRESSURIZATION IS PROHIBITED.''

Actions Accomplished Per Previous Issue of Service Bulletin

(k) Inspections, corrective actions, and follow-on actions accomplished before the effective date of this AD per McDonnell Douglas Service Bulletin DC9–53–137, Revision 07, dated February 6, 2001; or McDonnell Douglas Service Bulletin DC9–53–137, Revision 08, dated November 22, 2002; are considered acceptable for compliance with the corresponding action specified in this AD.

Credit for AD 2002–07–06, Amendment 39–12700

(l) Accomplishment of the actions specified in AD 2002–07–06 is acceptable for compliance with the requirements of this AD.

Submission of Information to Manufacturer Not Required

(m) Although McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003, specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(n)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

(2) AMOCs approved previously in accordance with AD 85–01–02 R1, amendment 39–4978; or AD 96–10–11, amendment 39–9618; are approved as AMOCs for paragraph (a) or (c) of this AD, as appropriate.

(3) 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 Engineering Representative (DER) who has been authorized by the Manager, Los Angeles ACO, to make such findings.

Issued in Renton, Washington, on November 26, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30114 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–301–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A319 and A320 series airplanes. That proposed AD would have required an inspection of the clearance space between the fuel quantity indication (FQI) probes located in the center fuel tank and the adjacent structure, an inspection of the position of the support bracket for each probe, an inspection of the part number for each support bracket, and corrective action if necessary. This new action revises the proposed rule by expanding the applicability of the proposed AD. The actions specified by this new proposed AD are intended to prevent the loss of FQI of the center fuel tank, and electrical arcing between the FQI probes and the adjacent structure in the event that the airplane is struck by lightning. Such arcing could create a potential ignition source within the center fuel tank and an increased risk of a fuel tank explosion and fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 29, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–301–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–301–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 2001–NM–301–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–301–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A319 and A320 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 3, 2003 (68 FR 317). That NPRM would have required an inspection of the clearance space between the fuel quantity indication (FQI) probes located in the center fuel tank and the adjacent structure; an inspection of the position of the support bracket for each probe; an inspection of the part number for each support bracket; and corrective action if necessary. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a civil airworthiness authority. Incorrect installation of the support brackets for the FQI probes, if not corrected, could result in loss of FQI of the center fuel tank, and electrical arcing between the FQI probes and the adjacent structure in

the event that the airplane is struck by lightning. Such arcing could create a potential ignition source within the center fuel tank and an increased risk of a fuel tank explosion and fire.

Actions Affecting Original NPRM

Since the issuance of Airbus Service Bulletin A320–28A1096, Revision 01, dated July 4, 2001, which was cited in the original NPRM as the appropriate source of service information for the proposed actions, Airbus has issued Service Bulletin A320–28A1096, Revision 03, dated August 27, 2002. Revision 03 of the service bulletin adds one airplane to the effectivity listing of the service bulletin and makes minor editorial changes. (Also after the issuance of Revision 01 of the service bulletin, Airbus issued Service Bulletin A320–28A1096, Revision 02, dated October 16, 2001, to add to the repair procedure instructions for applying interface sealant and to add a check of electrical bonding, and to make certain other nonsubstantive changes.)

Comments

The FAA has given due consideration to the comments received in response to the NPRM.

Support for the Proposal

One commenter supports the proposed AD, and one commenter states that it has no comment.

Request To Extend Compliance Time

One commenter requests that we extend the compliance time from 4,000 flight hours to 5,000 flight hours after the effective date of the AD. The commenter's rationale is that its C-check maintenance interval averages 4,863 flight hours.

We do not concur with the commenter's request. We note that the commenter operates 5 of the 24 U.S.-registered airplanes affected by this supplemental NPRM. In developing an appropriate compliance time for this AD, we considered the recommendation of the Direction Générale de l'Aviation Civile (DGAC) (which is the airworthiness authority for France), the degree of urgency associated with the subject unsafe condition, and the practical aspect of accomplishing the necessary actions within an interval that parallels normal scheduled maintenance for the majority of affected operators. In light of all of these factors, we have determined that a 4,000-flight-hour compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety, while allowing the majority of affected operators to comply at a scheduled maintenance interval. We have made no change to this supplemental NPRM in this regard; however, under the provisions of paragraph (d) of this proposal, we may approve requests for adjustments of the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Explanation of New Requirements of Supplemental NPRM

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 Airbus Service Bulletin A320–28A1096, Revision 03.

Conclusion

Since the changes described previously expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

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

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This 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. Therefore, in this supplemental NPRM, Note 1 and paragraph (d) of the original NPRM have been removed, and paragraph (c) of the original NPRM has been revised and is included as paragraph (d) of this supplemental NPRM.

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 25 airplanes of U.S. registry that would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,625, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this 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:

Airbus: Docket 2001–NM–301–AD.

Applicability: Model A319 and A320 series airplanes, as listed in Airbus Service Bulletin A320–28A1096, Revision 03, dated August 27, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of fuel quantity indication (FQI) of the center fuel tank, and to reduce the potential for an ignition source and possible explosion within the center fuel tank due to electrical arcing between the FQI probes and the adjacent structure in the event that the airplane is struck by lightning, accomplish the following:

Inspection

(a) Within 4,000 flight hours after the effective date of this AD, perform the actions specified in paragraphs (a)(1) and (a)(2) of this AD per the Accomplishment Instructions of Airbus Service Bulletin A320–28A1096, Revision 03, dated August 27, 2002. Although this service bulletin specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

(1) Perform a one-time detailed inspection for proper clearance space between each FQI probe located in the center fuel tank and the adjacent structure; and a one-time detailed inspection of the position of the support bracket for each probe.

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.''

(2) Inspect the support bracket for each probe to determine the part number of the support bracket.

Corrective Action

(b) During the inspections required by paragraph (a) of this AD, if the clearance between any FQI probe and the adjacent structure is determined to be less than 6.00 millimeters (0.236 inch), or if the position or part number of any probe support bracket is not correct, before further flight, remove and re-install the probe and its support bracket in the correct position, per Airbus Service Bulletin A320–28A1096, Revision 03, dated August 27, 2002.

Inspections Accomplished Per Previous Issue of Service Bulletin

(c) Inspections and corrective actions accomplished before the effective date of this AD per Airbus Service Bulletin A320–28A1096, dated March 23, 2001; Revision 01, dated July 4, 2001; or Revision 02, dated October 16, 2001; are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(d) 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 2: The subject of this AD is addressed in French airworthiness directive 2001–271(B), dated June 27, 2001.

Issued in Renton, Washington, on November 26, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30113 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MB Docket No. 02–230; FCC 03–273]

Digital Broadcast Content Protection

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on the mechanisms and standards by which new content protection and recording technologies can be approved for use with Covered Demodulator Products as part of an ATSC flag-based redistribution control system for digital broadcast content. The Further Notice of Proposed Rulemaking also seeks comment on: whether cable operators should be allowed to encrypt the digital basic tier so that they can give effect to the ATSC flag through their conditional access systems; and the interplay between an ATSC flag-based redistribution control system for digital broadcast content and the development of open source software applications, including software demodulators, for digital broadcast television. Potential Commission action in these areas is intended to protect digital broadcast television content from indiscriminate redistribution, thereby ensuring the continued flow of high value content to broadcast outlets and preserving the nation's broadcasting system.

DATES: Comments due January 14, 2004; reply comments are due February 13, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. For further filing information, *see* **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Susan Mort, (202) 418–1043 or *Susan.Mort@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Further Notice of Proposed Rulemaking portion of the Commission's Report and Order and Further Notice of Proposed Rulemaking (''Further NPRM''), FCC 03–273, adopted and released November 4, 2003. The full text of the Commission's Further NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, Qualex International, (202) 863–2893, Portals II, Room CY–B402, 445 12th St., SW., Washington, DC 20554, or may be reviewed via Internet at *http://www.fcc.gov/mb.*

Synopsis of the Further Notice of Proposed Rulemaking

1. Although we believe that our adoption of a flag-based redistribution control system for digital broadcast television will further the digital transition and ensure the continued flow of high value content to broadcast outlets, further comment is needed on several issues. As an initial matter, we seek comment on whether cable operators that retransmit DTV broadcasts may encrypt the digital basic tier in order to convey the presence of the ATSC flag through their conditional access system. Section 76.630 of the Commission's rules generally prohibits cable operators from ''scrambl[ing] or encrypt[ing] signals carried on the basic service tier'' without distinguishing between analog and digital service. NCTA has suggested that allowing cable operators to encrypt the digital basic tier and ''virtually'' convey the presence of the flag will facilitate the offering of future home networking services. We seek comment on whether cable operators should be allowed to encrypt in this manner.

2. In response to our Notice of Proposed Rulemaking, EFF questioned the impact of a flag-based regime on innovations in software demodulators and other DTV open source software applications. The Commission has actively promoted the development of

software defined radio and other software demodulators as important innovations in the digital age. We seek further comment on the interplay between a flag redistribution control system and the development of open source software applications, including software demodulators, for digital broadcast television.

3. This Further Notice of Proposed Rulemaking also seeks comment on whether standards and procedures should be adopted for the approval of new content protection and recording technologies to be used with device outputs on Demodulator Products. If so, we seek comment on the various types of content protection technologies that should be considered as a part of this process, including but not limited to digital rights management, wireless and encryption-based technologies. We recognize that similar issues have been raised with respect to digital cable ready DTV receivers in the Second Further Notice of Proposed Rulemaking in the Commission's ongoing ''Plug and Play'' proceeding. We seek comment on whether a unified regime should be employed in both instances.

4. With respect to the particular standards and procedures to be employed, we seek comment on whether objective criteria should be used to evaluate new content protection and recording technologies and, if so, what specific criteria should be used. For example, in our recent Second Report and Order and Second Further Notice of Proposed Rulemaking relating to digital cable compatibility, Microsoft Corporation and Hewlett Packard Corporation submitted a detailed proposal suggesting functional requirements that could be used to evaluate digital rights management technologies for use with digital cable ready products. We seek comment on this proposal in the ATSC flag context, as well as on other proposals submitted in this proceeding relying on objective criteria, and any new proposals that commenters may submit to the Commission.

5. We also seek comment on the appropriate scope of redistribution that should be prevented. In general, we believe that a flag based system should prevent indiscriminate redistribution of digital broadcast content, however, we do not wish to foreclose use of the Internet to send digital broadcast content where robust security can adequately protect the content and the redistribution is tailored in nature. We see comment on the usefulness of defining a personal digital network environment (''PDNE'') within which consumers could freely redistribute digital broadcast television content. If so, we seek comment on the various permutations of a PDNE that were proposed in the BPDG Final Report *and* whether any modifications are needed to maintain consumer's home viewing expectations. We also seek comment on possible new formulations of a PDNE.

6. We also seek comment on whether content owners are the appropriate entities to make initial approval determinations, or whether another entity should have decision-making authority. In particular, we seek comment on whether the Commission, a qualified third party, or an independent entity representing various industry and consumer interests should make approval and revocation determinations.

7. As to the issue of how approved content protection and recording technologies may be revoked should their security be compromised, we seek comment on the appropriate standard for revocation. Specifically, we seek comment on whether revocation is appropriate where a content protection or recording technology is perceived to be insecure, or whether the appropriate standard is where security has been compromised in a significant, widespread manner. Once a content protection or recording technology has been revoked, we seek comment on the appropriate mechanism by which revocation should be effectuated. For example, should revoked content protection or recording technologies be eliminated on a going-forward basis, while preserving their functionality for existing devices? We also seek comment on whether there are technological or other means of revoking content protection or recording technologies while preserving the functionality of consumer electronics devices.

8. *Authority.* This Further NPRM is issued pursuant to authority contained in sections 1, 2, 4(i) and (j), 303, 307, 309(j), 336, 337, 396(k), 403, 601, 614(b) and 624a of the Communications Act of 1934, as amended.

9. *Ex Parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

10. *Accessibility Information.* Accessible formats of this Further NPRM (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or at *Brian.Millin@fcc.gov.*

11. *Comment Information.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 14, 2004, and reply comments on or before February 13, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

12. Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW.,

Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

13. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this Further NPRM. The IRFA is set forth below. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Further NPRM, and they should have a separate and distinct heading designating them as responses to the IRFA.

14. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Further NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking portion of this item. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice of Proposed Rulemaking portion of this item provided in paragraph 69 of the item. The Commission will send a copy of this entire Report and Order and Further Notice of Proposed Rulemaking (''Report and Order and Further NPRM''), including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the Further Notice of Proposed Rulemaking portion of this item and the IRFA (or summaries thereof) will be published in the **Federal Register**.

16. *Need for, and Objectives of, the Proposed Rules.* Content providers have suggested that they should have the ability to make determinations about which new content protection and recording technologies may be used in connection with demodulator products under an ATSC flag-based redistribution control system. Commenters have indicated that content providers should not be the sole arbiters of such decisions. However, the record currently before the Commission is insufficient on this matter. In order to ensure the connectivity and interoperability of Demodulator Products and peripheral devices, we are initiating the Further NPRM to seek comment on the process and criteria by which new content protection and recording technologies can be evaluated and approved for use in this context. The Further NPRM also seeks comment on whether cable operators should be allowed to encrypt the digital basic tier in order to be able to give effect to the ATSC flag through cable operators' conditional access system. The Further NPRM also seeks comment on the interplay between an ATSC flag system and open source software for DTV applications, such as software defined radio.

17. *Legal Basis.* The authority for this proposed rulemaking is contained in sections 1, 2, 4(i) and (j), 303, 307, 309(j), 336, 337, 396(k), 403, 601, 614(b) and 624a of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i) and (j), 303, 307, 309(j), 336, 337, 396(k), 403, 521, 534(b) and 544a.

18. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term ''small entity'' as encompassing the terms ''small business,'' ''small organization,'' and ''small governmental entity.'' In addition, the term ''small Business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

19. *Television Broadcasting.* The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV). Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

20. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

21. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite (''DBS'') services, home satellite dish (''HSD'') services, multipoint distribution services (''MDS''), multichannel multipoint distribution service (''MMDS''), Instructional Television Fixed Service (''ITFS''), local multipoint distribution service (''LMDS''), satellite master antenna television (''SMATV'') systems, and open video systems (''OVS''). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

22. *Cable Operators.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then,

some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this Further NPRM.

23. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

24. *Direct Broadcast Satellite (''DBS'') Service.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution Services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. There are four licensees of DBS services under part 100 of the Commission's rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

25. *Home Satellite Dish (''HSD'') Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution Services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

26. *Multipoint Distribution Service (''MDS''), Multichannel Multipoint Distribution Service (''MMDS'') Instructional Television Fixed Service (''ITFS'') and Local Multipoint Distribution Service (''LMDS'').* MMDS systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

27. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $12.5 million annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

28. The SBA definition of small entities for Cable and Other Program Distribution Services, which includes such companies generating $12.5 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

29. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding calendar years. These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

30. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS

stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

31. *Satellite Master Antenna Television (''SMATV'') Systems.* The SBA definition of small entities for Cable and Other Program Distribution Services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

32. *Open Video Systems (''OVS'').* Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of Cable and Other Program Distribution Services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

33. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment as well as radio and television broadcasting and wireless communications equipment. These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

34. *Computer Manufacturers.* The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity. Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities. The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

35. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* At this time, we do not expect that the proposed rules would impose any additional reporting or recordkeeping requirements. However, compliance with the rules, if they are adopted, may require consumer electronics manufacturers to seek approval for content protection technologies and recording methods to be used in conjunction with demodulator products. These requirements will have an impact on consumer electronics manufacturers, including small entities. We seek comment on the possible burden these requirements would place on small entities. Also, we seek comment on whether a special approach toward any possible compliance burdens on small entities might be appropriate. The proposed rules would also allow cable operators to encrypt the digital basic tier, however, we do not believe that this voluntary provision would have an impact on small entities.

36. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

37. As indicated above, the Further NPRM seeks comment on whether the

Commission should adopt rules establishing an approval mechanism for new content protection and recording technologies to be used with demodulator products. Consumer electronics manufacturers may be required to seek such approval prior to implementing content protection and recording technologies in demodulator products. We welcome comment on modifications of this proposal to lessen any potential impact on small entities, while still remaining consistent with our policy goals. The Further NPRM also seeks comment on whether cable operators should be allowed to encrypt the digital basic tier in order to be able to give effect to the ATSC flag through cable operators' conditional access system. While we do not believe that this rule change would have a potential impact on small entities because it would be voluntary in nature, we seek comment on whether a special approach toward any possible compliance burdens on small entities might be appropriate.

38. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30008 Filed 12–2–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 031112277–3277–01;I.D. 080603B]

RIN 0648–AR70

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Space Vehicle and Test Flight Activities from Vandenberg Air Force Base (VAFB), CA

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

ACTION: Proposed rule; request for comment.

SUMMARY: NMFS has received a request from the 30th Space Wing, U.S. Air Force (USAF) for the authorization for the harassment of small numbers of pinnipeds incidental to space vehicle and test flight activities from Vandenberg Air Force Base, CA (VAFB) between January 1, 2004, and December 31, 2008. By this document, NMFS is proposing regulations that govern that take. In order to issue a take authorization, NMFS must determine that the total taking will have a negligible impact on the affected species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. NMFS must also prescribe the means of effecting the least practicable adverse impact on such species or stock and their habitats. NMFS invites comment on the application and proposed regulations.

DATES: Comments must be postmarked no later than December 18, 2003. Comments will not be accepted if submitted via e-mail or the Internet.

ADDRESSES: Comments may be sent to and copy of the application may be obtained by writing to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). The NMFS' Administrative Record for this action will be maintained at this address. Copies of documents are available at this address.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, National Marine Fisheries Service, 301–713–2322, ext 163.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the total taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the affected species or stocks and their habitats, and the requirements pertaining to the monitoring and reporting of such taking.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' The MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On September 2, 2003, NMFS received an application from the USAF requesting authorization under section 101(a)(5)(A) of the MMPA to harass small numbers of marine mammals incidental to space vehicle and test flight activities conducted by the USAF on Vandenberg. NMFS proposes regulations to govern these authorizations, to be effective from January 1, 2004, through December 31, 2008. These regulations, if implemented, would allow NMFS to issue annual Letters of Authorization (LOAs) to the USAF. The current regulations and LOA expire on December 31, 2003. A detailed description of the operations is contained in the USAF application (USAF, 2003) which is available upon request (*see* **ADDRESSES**).

Description of the Specified Activity

VAFB is the main west coast launch facility for placing commercial, government, and military satellites into polar orbit on expendable (i.e. not reusable) launch vehicles, and for testing and evaluation of intercontinental ballistic missiles (ICBM) and sub-orbital target and interceptor missiles. In addition to space vehicle and missile launches, there are security and search and rescue helicopter operations, as well as test and evaluation flights of fixed-wing air craft. The USAF expects to launch a total of 30 rockets and missiles from VAFB.

Currently five space launch vehicle programs use VAFB to launch satellites into polar orbit: Atlas IIAS, Delta II, Minotaur, Taurus, and Titan (II and IV). Two new programs, the Evolved Expendable Launch Vehicle (EELV) and Space X, are scheduled to make their inaugural launches at VAFB in 2004. The EELV will use a Boeing Delta IV vehicle and a Lockheed-Martin Atlas V. Eventually, these vehicles will replace

many of the other programs such as Atlas II and Titan, but initially there will be an overlap in the launches of each program. The Space X is a commercial program which will launch small payloads into low earth orbit. There is also a variety of small missiles, several types of interceptor and target vehicles, and fixed-wing aircrafts that are launched from VAFB.

Atlas IIAS

The Atlas IIAS is launched from Space Launch Complex (SLC) 3E on south VAFB, approximately 9.9 km (6.2 mi) from the Rocky Point harbor seal haul-out area and 11.1 km (6.9 mi) from the Spur Road haul-out site. The Atlas IIAS is a medium-sized (up to 48m, 157.5 ft, tall) launch vehicle with approximately 724,800 lbs of thrust. Two Atlas IIAS launch vehicles have been launched from SLC 3E (the Atlas IIAS AC–141 Terra launched on 18 December 1999 and the Atlas IIAS MLV–10 launched on 8 September 2001).

The received sound level at south VAFB from the Atlas IIAS launches was relatively quiet, due to the great amount of attenuation from the 9.9 km (6.2 mi) distance between the measurement site and SLC–3E. Measurements at the south VAFB haul-out site were similar to those measured at the north base Spur Road monitoring site, but slightly higher. The A-weighted sound exposure levels (ASEL), measured at the south haul-out site for the two launches, were 87.3 and 88.5 dB, the unweighted SELs were measured at 124.2 and 118.0 dB and the
C-weighted SEL were measured to be 113.6 and 112.1 dB. The launch noise reached a maximum fast sound level (Lmax) of 76.4 and 80.8 dB.

The launch noise measured at the north VAFB Spur Road acoustic monitoring site was slightly quieter than at the south VAFB monitoring locations, due to the greater distance between the site and the launch pad. The launch noise at this site was unsubstantial. The A-weighted SELs for both launches were measured to be 86.1 dB, and the Terra launch had an unweighted SEL of 117.2 dB, and a C-weighted SEL of 110.0 dB. The launch noise reached Lmax levels of 75.2 and 79.7 dB. A sonic boom was measured for the launch of the Atlas IIAS MLV–10 on SMI. The peak overpressure was 0.75 psf (125.1 dB) and the rise time was relatively slow at 2.6 milliseconds. This relatively slow rise time reduces the higher frequency content of the boom and tends to produce a sound more resembling distant thunder than the more familiar sharp crack of a distinct sonic boom.

Delta II

The Delta II is launched from SLC–2 on north VAFB, approximately 2.0 km (1.2 mi) from the Spur Road harbor seal haul-out site. The Delta II is a medium-sized launch vehicle approximately 38 m (124.7 ft) tall. The Delta II uses a Rocketdyne RS–27A main liquid propellant engine and additional solid rocket strap-on graphite epoxy motors (GEMs) during liftoff. A total of 3, 4 or 9 GEMs can be attached for added boost during liftoff. When 9 GEMs are used, 6 are ignited at liftoff and 3 are ignited once the rocket is airborne. When 3 or 4 GEMs are used, they are all ignited at liftoff. The number of GEMs attached to each vehicle will determine the amount of launch noise produced by the vehicle.

Six Delta II launches have been acoustically quantified near the Spur Road harbor seal haul-out site. The noise at the Spur Road site from the Delta II launches is relatively loud, primarily due to the close proximity of the launch pad. The Delta II is the second loudest of the launch vehicles at the Spur Road haul-out site with unweighted SEL measurements ranging from 126.5 to 128.8 dB and averaging of 127.4 dB (as measured by the digital audio tape [DAT] recorder). The C-weighted SEL ranged from 124.3 to 126.7 dB with an average of 125.4 dB (DAT). The A-weighted SEL measurements from both a sound level meter (SLM) and the DAT were similar and ranged from 111.8 to 118.2 dB and had an average of114.5 dB (DAT). The seal-weighted SELs were considerably reduced to range from 74.2 to 79.7 dB and averaged 76.9 dB. The Lmax values ranged from 104.2 to 112.5 and averaged 109.5 dB. Sonic booms have been measured on SMI from two Delta II launches, the Iridium MS–12 and EO–1. The Iridium MS–12 had two small sonic booms impact the Point Bennett area of SMI with peak overpressures of 0.47 and 0.64 psf and rise times of 18 and 91 ms. The Delta II EO–1 sonic boom had a peak overpressure of 0.4 psf and rise time of 41 microseconds (μs).

Minotaur

The Minotaur launch vehicle is launched from the California Spaceport on south VAFB, near SLC–6 and is approximately 2.3 km (1.4 mi) from the south VAFB pinniped haul-out sites. The Minotaur launch vehicle is made up of modified Minuteman II Stage I and Stage II segments mated with Pegasus upper stages. The Minotaur is a small vehicle, approximately 19.2 m (63.0 ft) tall with approximately 215,000 lbs of thrust. Although the Minotaur produces less thrust than other larger launch vehicles, due to its close proximity to the south VAFB haul-out sites, it is one of the loudest vehicles at this site. Two Minotaur launch vehicles have been launched from VAFB (26 January 2000 and 19 July 2000).

The launch noise measured near the south VAFB haul-out sites was moderately loud, primarily due to the close proximity to the launch pad. The unweighted SEL measurements varied by 3.5 dB between the two launches and were measured to be 119.4 and 122.9 dB. The C-weighted SELs varied less and were measured at 116.6 and 117.9 dB. From the DAT and SLM measurements, the
A-weighted SEL ranged from 104.9 to 107.0 dB. The launch noise reached an Lmax level of 101.7 and 103.4 dB.

Taurus

The Taurus space launch vehicle is launched from 576–E on north VAFB, approximately 0.5 km (0.3 mi) from the Spur Road harbor seal haul-out site. There have been 6 Taurus rockets launched from 576–E. The standard Taurus is a small launch vehicle, at approximately 24.7 m (81.0 ft) tall and is launched in two different configurations: Defense Advanced Research Projects Agency (DARPA) and standard, with different first stages providing 500 or 400 kilopounds of thrust, respectively.

The launch noise from 4 Taurus launches has been measured near the Spur Road haul-out site. The noise arriving at the Spur Road monitoring site, near the harbor seal haul-out, was substantial due to the close proximity of the launch pad. At 0.5 km to SLC–576, the Taurus is the loudest of the launch vehicles at the Spur Road haul-out site. The unweighted SEL measurements from all the measured Taurus vehicles ranged from 135.8 to 136.8 and averaged 136.4 dB. The C-weighted SEL measurements were slightly lower as expected, ranging from 133.8 to 134.8 dB and averaged 134.5 dB. The A-weighted SEL measurements ranged from 123.5 to 128.9 dB with an average of 126.6 dB (SLM). The harbor seal-weighted SELs ranged from 88.0 to 91.3 dB and averaged 90.2 dB. The Lmax values were measured to range from 118.3 to 122.9 dB and averaged 120.9 dB (SLM).

Titan II

The Titan II space launch vehicle is launched from SLC–4W, which is approximately 8.5 km (5.3 mi) north of the south VAFB pinniped haul-out sites.

The USAF has launched 6 Titan II space launch vehicles from SLC–4W during the study period. The Titan II space launch vehicle is a medium-sized liquid fueled rocket at 36.0 m (118.1 ft) tall. It has a small-to-medium weight lift capability; additional strap-on GEM solid rocket motors can be added to the first stage to increase the lift capability. All of the Titan II launch configurations were the same, launched without additional solid rocket motors attached and had a thrust of approximately 474,000 lbs.

The Titan II launch noise as measured near the south VAFB haul-out site, which is the closest haul-out to SLC–4W, is unsubstantial and ranks among the quieter vehicles. This is primarily due to its moderate thrust and the relatively long distance to the launch pad. The unweighted SEL measurements ranged from 116.3 to 120.3 dB and averaged 118.3 dB. The C-weighted SELs ranged from 109.6 to 115.0 dB and averaged 112.5 dB. The A-weighted SELs ranged from 83.5 to 95.7 dB and averaged 89.9 dB (DAT). The harbor seal-weighted SELs ranged from 38.2 to 54.5 dB and averaged 47.4 dB. The Lmax values were measured to range from 74.9 to 85.9 dB and averaged 80.1 dB.

Titan IV

The Titan IV space launch vehicle is launched from SLC–4E, which is approximately 8.5 km (5.3 mi) from the south VAFB pinniped haul-out site. The Titan IV series was developed as a complementary heavy-lift vehicle to the Space Shuttle and is by far the largest vehicle currently launched from VAFB. The Titan IV is approximately 44 m (144.5 ft) tall and has a liquid fuel core engine and two upgraded solid rocket motors (SRMU) that provide approximately 3,400,000 lbs of thrust. The Titan IV is moderately loud and is one of the louder vehicles at the south VAFB haul-out site, primarily due to its large amount of thrust. The launch noise measurements for the 4 Titan IV launches measured were all fairly consistent. The unweighted SELs ranged from 125.9 to 130.2 dB and averaged 127.8 dB. Similarly, the C-weighted measurements varied very little, with the C-weighted SELs ranging from 119.0 to 124.2 dB and averaging 121.5 dB. There was a greater difference with the A-weighted and harbor seal-weighted measurements with the A-weighted SELs ranging from 96.6 to 104.5 dB with an average of 101.5 dB (DAT). The harbor seal-weighted SELs ranged from 54.4 to 63.5 dB with an average of 60.3 dB. The Lmax values were determined to range from 88.2 to 100.6 dB and averaged 95.6 dB. Several sonic booms have been measured for the launches of the Titan IV. The peak overpressures from sonic booms produced by this vehicle range from 1.34 to 8.97 psf. These booms have been measured for 4 launches of the Titan IV and have impacted each coast of SMI.

Evolved Expendable Launch Vehicle (EELV)

The EELV is the Air Force's newest launch vehicle program and will use the Atlas V vehicle from Lockheed-Martin and the Delta IV space launch vehicle from the Boeing Company for launches from VAFB. The EELV program will become the main space launch program over the next several years, replacing many of the other launch vehicles at VAFB. The maximum number of forecasted EELV launches per year is 5, with a total of 68 launches projected through 2020 (U.S. Air Force 2000).

The Atlas V consists of both a medium (V400) and heavy (V500) lift vehicle with up to 5 solid rocket boosters. During the next 5 years, only the medium lift V400 series vehicle will be launched from VAFB. The V400 series will lift up to 7,640 kg (16,843 lbs) into geosynchronous transfer orbit or up to 12,500 kg (27,557.3 lbs) into low earth orbit. The Atlas V consists of a common booster core (3.8 m, 12.5 ft, in diameter and 32.5 m, 106.6 ft, high) powered by an RD180 engine that burns a liquid propellant fuel consisting of liquid oxygen and RP1 fuel (kerosene). The RD180 engine provides 840,000 lbs of thrust on liftoff, and up to three solid rocket boosters can be attached to the common booster core to provide extra lift. There is a Centaur upper stage (3.1 m, 10.2 ft, in diameter and 12.7 m, 41.7 ft, high) powered by a liquid oxygen and liquid hydrogen fuel. The payload fairing is up to 4.2 m (13.7 ft) making the complete Atlas V up to 58.3 m (191.3 ft) high.

The Atlas V will be launched from SLC–3 East, the site of the current Atlas II launch facility. SLC–3 East is approximately 9.9 km (6.2 mi) north of the main harbor seal haul-out site in the area of Rocky Point. Launches of the smaller Atlas IIAS (47.4 m, 51.8 ft, in length and 700,000 lbs of thrust) produced A-weighted sound exposure levels ranging from 87.3 to 88.5 dB at the south VAFB haul-out site. The predicted noise level at the closest haul-out site (10 km, 6.2 mi, from the launch pad of an Atlas V) would be slightly louder than the noise levels from the Atlas IIAS. The maximum sonic boom impacting the Channel Islands would be 7.2 pounds per square foot (psf). The size of the actual sonic boom will depend on meteorological conditions, which can vary by day and season and with the trajectory of the vehicle.

The Delta IV family of launch vehicles consists of 5 launch vehicleconfigurations utilizing a common booster core (CBC) first stage and 2 and 4 strap on GEMs. The Delta IV comes in four medium lift configurations and one heavy lift configuration consisting of multiple common booster cores. The Delta IV can carry payloads from 4,210 to 13,130 kg (9.281.3 to 28,946.2 lbs) into geosynchronous transfer orbit. The Delta IV will be launched from SLC–6, which is 2.8 km (1.7 mi) north of the main harbor seal haul-out site at South Rocky Point. The Delta IV will be the loudest vehicle at the south VAFB harbor seal haul-out site. The Delta IV is predicted to have a sonic boom offshore of up to 7.2 psf for the largest of the medium configurations and 8 to 9 psf for the heavy configuration. The size and location of the actual sonic boom will depend on meteorological conditions, which can vary by day and season and with the trajectory of the vehicle.

Space X

The Space X program will launch the Falcon space launch vehicle from SLC 3–West on south VAFB. The Falcon is a light space launch vehicle and will send small payloads of up to 500 kg (1102.3 lbs) into low earth orbit. The Falcon vehicle is 1.7 m (5.6 ft) in diameter and 20.7 m (67.9 ft) in height, making it approximately the size of a Peacekeeper missile. The Falcon is a two-stage liquid fuel vehicle. The first stage is reusable and uses a liquid oxygen and kerosene base fuel. The second stage is expendable and also uses a liquid oxygen and kerosene fuel.

Other Launch Activities

There are a variety of small missiles launched from VAFB, including Peacekeeper, Minuteman III, and several types of interceptor and target vehicles for the National Missile Defense Program. The missile launch facilities are spread throughout northern VAFB and are within 0.65 to 3.9 km (0.4 to 2.4 mi) of the recently occupied Lion's Head haul-out site and approximately 11 to 16.5 km (6.8 to 10.3 mi) north of the Spur Road and Purisma Point harbor seal haul-out sites.

The Peacekeeper missile is an Inter-Continental Ballistic Missile (ICBM) that was developed as part of the United States strategic deterrence force. The Peacekeeper is launched from various underground silos as part of a test and evaluation program. The Peacekeeper is composed of four rocket motors, 21.8 m

(71.5 ft) in length by 2.3 m (7.5 ft) in diameter, with the first stage thrust of 500,000 lbs. The Peacekeeper, unlike other silo launch missiles, is ''cold launched,'' initially propelled out of the silo with pressurized gas. The first stage rocket motor is ignited once the vehicle is approximately 20 m (65.6 ft) above the ground. The Peacekeeper missile is being phased out and only a few launches remain.

The Minuteman III missile is an ICBM that was also developed as part of the United States strategic deterrence force. Similar to the Peacekeeper, the Minuteman III is launched from underground silos but is not cold launched. The Minuteman III is composed of three rocket motors and is 18.0 m (59.1 ft) in length by 1.7 m (5.6 ft) in diameter, with a first stage thrust of 202,600 lbs.

The Missile Defense Agency (MDA) is developing the Ground-based Midcourse Defense (GMD) element of the conceptual Ballistic Missile Defense System (BMDS). The BMDS concept is to defend against threat missiles in each phase or segment of the missile's flight. There are three segments of this conceptual system in various stages of technology development: Boost Phase Defense, Midcourse Defense, and Terminal Defense. Each segment of the BMDS is being developed to destroy an attacking missile in the corresponding boost, mid-course, or terminal phase of its flight. The GMD element is designed to protect the United States in the event of a limited ballistic missile attack by destroying the threat missile in the mid-course phase of its flight. During the mid-course phase, which occurs outside the earth's atmosphere for medium and long-range missiles, the missile is coasting in a ballistic trajectory.

A variety of small missiles under 13 m (42.7 ft) including the Hera, Lance, Patriot As A Target, ERINT, Black Brant, Terrier, SRTYPI II, Castor I, Storm, ARIES, and Hermes are also included in the application because of the new harbor seal pupping site that was established in 2002 at Lion's Head. Those missiles, in addition to missiles already included in previous NMFS authorizations for VAFB (Minuteman and Peacekeeper missiles and missiles from the Ground Based Interceptor programs), and the new generation of missiles from the MDA will be covered by these regulations and annual LOAs. Several types of missiles will be used for target and interceptor test and evaluation; some of these missiles are being used currently (Booster Verification Test) and the remainder will not be used until 2004 or later. All of the target and interceptor missiles are smaller than the Minuteman III or Peacekeeper missiles that are currently launched from VAFB. Many of the different missile types have interchangeable first or second stage motors; therefore, most of the missiles may have similar noise characteristics, depending on their configuration.

The Ground Based Interceptors (GBI) are approved for launchings at VAFB (12 May 2003, 68 FR 25347). The GBI Booster Verification and the uncanisterized Orbital Booster Vehicle will be flight tested from LF–21 and LF–23. The missiles would be comprised of a commercially available, solid propellant booster consisting of three stages and an exo-atmospheric kill vehicle emulator.

Aircraft Activities

VAFB is also a site for limited flight testing and evaluation of fixed-wing aircraft. Three approved routes are used that avoid the established pinniped haul-out sites. A variety of aircraft, including the B1 and B2 bombers, F–14, F–15, F–16, and F–22 fighters, and KC–135 tankers may use the test and evaluation routes.

Various fixed-wing aircraft (jet and propeller aircraft) use VAFB for a variety of purposes including delivery of space or missile vehicle components, launching of launch vehicles at high altitude, such as the Pegasus, and emergency landings. VAFB has approximately 120–fixed-wing flights per year and 10,000 take offs and landings (training operations), which occur mostly on north VAFB (U.S. Air Force 2003). All aircraft are required to remain outside of an established 1,000–ft (304.8 m) bubble around pinniped rookeries and haul-out sites, except when performing a life-or-death rescue mission, when responding to a security incident, or during an aircraft emergency.

The VAFB helicopter squadron uses a UH-IN helicopter and provides support for launch operations, security reconnaissance, aerial photography, training, transport, and search and rescue. VAFB has approximately 75 helicopter sorties per month (U.S. Air Force 2003). All helicopters are required to remain outside of the 1,000–ft (304.8 m) bubble around pinniped rookeries or haul-out sites, except when performing a life-or-death rescue mission, when responding to a security incident, or during an aircraft emergency.

Description of Habitat and Marine Mammals Affected by the Activity

VAFB is composed of 99,000 acres of land and approximately 65 km (39 mi) of coastline on the coast of Central California within Santa Barbara County. The northern Channel Islands are located 72 km (44.7 mi) south of VAFB and consist of San Miguel Island (SMI), Santa Cruz Island (SCI), and Santa Rosa Island (SRI). The northern Channel Islands are part of the Channel Islands National Park and the Channel Islands National Marine Sanctuary.

The most common marine mammal inhabiting VAFB is the Pacific harbor seal (*Phoca vitulina richardsi*). Harbor seals are local to the area, rarely traveling more than 50 km (31.1 mi) from their haul-out sites. They haul-out on small offshore rocks or reefs and sandy or cobblestone cove beaches. Although harbor seals can be found along much of the VAFB coastline, they congregate in the areas of Oil Well Canyon to South Rocky Point and near the boat harbor on south VAFB. The haul-out site on south VAFB has the largest population of harbor seals on VAFB, with up to 515 seals surveyed, and has been growing at an average annual rate of 12.7 percent since 1997 while the California population has remained stable. At least 700 harbor seals used SMI, 1,000 used SCI and 900 used SRI during the 2002 aerial counts (Lowry and Caretta 2003).

Less than 200 California sea lions (*Zalophus californianus*) are found seasonally on VAFB. Sea lions may sporadically haul-out to rest when in the area to forage or when transiting the area, but generally spend little time there. Sea lions may haul-out in the area of Rocky Point, Point Arguello, Point Pedernales, and Point Sal, just north of VAFB. In 2003, at least 142 sea lions and 5 pups were hauled out at Rocky Point. This was the first reported occurrence of sea lions being born at VAFB but may be a result of the El Nino conditions that existed at that time. SMI is one of the major California sea lion rookeries, along with San Nicolas Island, with about 23,000 pups born each year. Launches from VAFB will only affect SMI.

Approximately 150 northern elephant (*Mirounga angustirostris*) seals may be found seasonally on VAFB. Weaned elephant seal pups making their first foraging trips occasionally haul-out for 1 to 2 days at VAFB before continuing on their migration. In April 2003, approximately 88 juveniles and young adult females began to haul-out at South Rocky Point to molt. The nearest elephant seal haul-out point is at Point Conception, 25 km (15.5 mi) south of VAFB. Elephant seals primarily use SMI and SRI for breeding and hauling out to rest or molt. Up to 12,000 elephant seal pups are found on SMI and up to 1,500 on SRI (Lowry 2002).

There have been no reports of northern fur seals (*Callorhinus ursinus*) on VAFB. They are only found on the west end of SMI at Point Bennet and Castle Rock, just offshore of SMI. The SMI stock is approximately 4,000 fur seals (Forney et al. 2000d).

There have been no reports of Steller sea lions (*Eumetopias jubatus*) on VAFB. A single observation of a sub adult male Steller sea lion on SMI was made in the spring of 1998 prior to the breeding season (Thorson et al. 1999). Previously, the last observation of a Steller sea lion was made in the mid–1980's.

There have been no reports of Guadalupe fur seals (*Arctocephalus townsendi*) on VAFB. A few Guadalupe fur seals are seen each year at SMI, generally in the summer or fall.

Potential Effects of Rocket and Missile Launches and Associated Activities on Marine Mammals

The activities under these regulations create two types of noise: Continuous (but short-duration) noise, due mostly to combustion effects of aircraft and launch vehicles, and impulsive noise, due to sonic boom effects. Launch operations are the major source of noise on the marine environment from VAFB. The operation of launch vehicle engines produces significant sound levels. Generally, noise is generated from four sources during launches: (1) Combustion noise from launch vehicle chambers, (2) jet noise generated by the interaction of the exhaust jet and the atmosphere, (3) combustion noise from the post-burning of combustion products, and (4) sonic booms. Launch noise levels are highly dependent on the type of first-stage booster and the fuel used to propel the vehicle. Therefore, there is a great similarity in launch noise production within each class size of launch vehicles.

The noise generated by VAFB activities will result in the incidental harassment of pinnipeds, both behaviorally and in terms of physiological (auditory) impacts. The noise and visual disturbances from space launch vehicle and missile launches, and aircraft and helicopter operations may cause the animals to move towards the water or enter the water. The percentage of seals leaving the haul-out increases with noise level up to approximately 100 decibels (dB) A-weighted Sound Exposure Level, after which almost all seals leave, although recent data has shown that an increasing percentage of seals have remained on shore. Using time-lapse video photography, it was discovered that during four launch events, the seals that reacted to the launch noise but did not leave the haul-out were all adults. This suggests that they had experienced other launch disturbances and had habituated to it in that they reacted less strongly than other younger seals.

The louder the launch noise, the longer it took for seals to begin returning to the haul-out site and for the numbers to return to pre-launch levels. In two past Athena IKONOS launches with A-weighted sound exposure levels of 107.3 and 107.8 dB at the closest haul-out site, seals began to haul-out again approximately 16 to 55 minutes post-launch (Thorson et al. 1999a; 1999b). In contrast, noise levels from an Atlas launch and several Titan II launches had A-weighted sound exposure levels ranging from 86.7 to 95.7 dB at the closest haul-out and seals began to return to the haul-out site within 2 to 8 minutes post-launch (Thorson and Francine 1997; Thorson et al. 2000). Seals may begin to return to the haul-out site within 2 to 55 minutes of the launch disturbance and the haul-out site has usually returned to pre-launch levels within 45 minutes to 120 minutes.

The main concern on the northern Channel Islands is potential impacts from sonic booms created during launches of space vehicles from VAFB. Sonic booms are impulse noises, as opposed to continuous (but short-duration) noise such as that produced by aircraft and rocket launches. The initial shock wave during a sonic boom propagates along a path that grazes the earth's surface due to the angle of the vehicle and the refraction of the lower atmosphere. As the launch vehicle pitches over, the direction of propagation of the shock wave becomes more perpendicular to the earth's surface. These direct and grazing shock waves can intersect to create a narrowly focused sonic boom, about 1 mile of intense focus, followed by a larger region of multiple sonic booms. During the period of 1997 to 2002, there were no sonic booms above 2.0 psf recorded on the northern Channel Islands. Small sonic booms between 1 to 2 psf usually elicit a heads up response or slow movement toward and entering the water, particularly for pups.

From the research and monitoring conducted over the last 5 years, it has become clear that there is little difference between distinctive classes of rockets (ballistic launches and satellite launches). Therefore, to better represent the possible impacts to marine mammals, launch activities at VAFB have been divided into three geographic zones that comprise the main pinniped haul-out on VAFB. This is because the level of disturbance caused by launches is more closely associated with the geographical proximity of launch sites to haul-out sites.

Zone 1 is northern VAFB. The main haul-out site in this area is at Lion's Head and is regularly used by small numbers of harbor seals for resting and pupping. Although this is not a major haul-out site, it is an important site to consider during launches that occur during the harbor seal pupping season.

Zone 2 is in the central VAFB, running from Spur Road north to San Antonio Creek. This area has the two main harbor seal haul-out sites on north VAFB, Spur Road, and Purisima Point. Spur Road has up to 145 harbor seals but is not a pupping site. Purisima Point has up to 50 seals and up to 5 pups.

Zone 3 is in southern VAFB and covers from approximately the Boat Harbor to northern boundary of south VAFB. The main harbor seal haul-out site on VAFB is found in the area of the Boat Harbor to Rocky Point. Up to 500 harbor seals are found there during the molting season and up to 52 pups during the pupping season, March through June. California sea lions will haul-out on occasion on the Boat Dock jetty and seasonally at Rocky Point. Weaned northern elephant seal pups (only 1 to 2 seals) will haul-out occasionally for several days to rest in the area of Rocky Point during their first foraging trip to sea.

Sonic booms created by the larger space launch vehicles may impact marine mammals on the northern Channel Islands, particularly SMI. Based on previous monitoring of sonic booms created by space launch vehicles on SMI (Thorson *et al.* 1999a: 1999b), it is estimated that up to approximately 25 percent of the marine mammals may be disturbed on SMI. If conditions allow, under a scientific research permit issued under Section 104 of the MMPA, the hearing of harbor seals will be tested before and after each launch.

With respect to impacts on pinniped hearing, NMFS' proposed rule for the previous rulemaking indicated that VAFB launch and missile activities, including sonic booms, would have an impact on the hearing of pinnipeds (63 FR 39055; July 21, 1998). These impacts were limited to Temporary Threshold Shifts (TTS) lasting between minutes and hours, depending on exposure levels. Subsequent information on Auditory Brainstem Response (ABR) testing on harbor seals following Titan IV and Taurus launches indicates that no Permanent Threshold Shift (PTS) resulted from these launches. These results are consistent with NMFS'

previous conclusions in its prior rulemaking.

NMFS also notes here that stress from long-term cumulative sound exposures can result in physiological effects on reproduction, metabolism, and general health, or on the animals' resistance to disease. However, this is not likely to occur here, because of the infrequent nature and short duration of the noise, including the occasional sonic boom. Research shows that population levels at these haul-out sites have remained constant in recent years, giving support to this conclusion.

The USAF does not anticipate a significant impact on any of the species or stocks of marine mammals from launches from VAFB. For even the largest launch vehicles, such as Titan IV and Delta IV, the launch noises and sonic booms can be expected to cause a startle response and flight to water for those harbor seals, California sea lions and other pinnipeds that are hauled out on the coastline of VAFB and on the northern Channel Islands. The noise may cause TTS in hearing depending on exposure levels but no PTS is anticipated.

Numbers of Marine Mammals Expected to Be Taken by Harassment

It is estimated that up to approximately 25 percent of the marine mammals may be disturbed on SMI due to the rare occurrence of a sonic boom. Up to approximately 200 harbor seals of all age classes and sexes may be taken by level B harassment per launch on the northern Channel Islands, with an expected range of between zero and 200 harbor seals. Up to approximately 5,800 California sea lion pups and 2,500 juvenile and adult sea lions of either sex may be harassed at SMI per launch, with an expected range of between zero and 8,300 sea lions. Up to approximately 3,000 northern elephant seal pups and 10,000 northern elephant seals of all age classes and sexes may be taken, by level B harassment, per launch on the northern Channel Islands, with an expected range of between zero and 13,000 elephant seals. Up to approximately 300 northern fur seal pups and 1,100 juvenile and adult northern fur seals of both sexes may be taken, by level B harassment, per launch at SMI, with an expected range of between zero and 1,100 fur seals. One Steller sea lion of any age class or sex may be harassed during the period of the regulations. Up to two Guadalupe fur seals of any age class or sex may be harassed over the period of the proposed regulations. The numbers taken will depend on the type of rocket, location of the sonic boom, weather conditions that influence the size of the sonic boom, the time of day and time of year. For this reason, ranges are given for the harassment of marine mammals.

Effects of Rocket and Missile Launches and Associated Activities on Subsistence Needs

There are no subsistence uses for these pinniped species in California waters, and, thus, there are no anticipated effects on subsistence needs.

Marine Mammal Habitat at VAFB

Harbor seals, California sea lions, northern elephant seals, northern fur seals, Guadalupe fur seals, and Steller sea lions are known to inhabit VAFB and the surrounding islands. There will only be short-term disturbance effects to the behavior of the marine mammals and this will not affect their habitat.

Mitigation

To minimize impacts on pinnipeds on beach haul-out sites and to avoid any possible sensitizing or predisposing of pinnipeds to greater responsiveness towards the sights and sounds of a launch, the USAF has prepared the following mitigation measures.

All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting) which may require approaching pinniped rookeries closer than 1,000 ft (305 m). For missile and rocket launches, unless constrained by other factors including, but not limited to, human safety, national security or launch trajectories, holders of Letters of Authorization must schedule launches to avoid, whenever possible, launches during the harbor seal pupping season of March through June. NMFS also proposes to expand the requirement so that VAFB must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, and California sea lion pupping seasons.

If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and appropriate changes must be made through modification to an LOA, prior to conducting the next launch of the same vehicle under that LOA.

Monitoring

As part of its application, VAFB provided a monitoring plan, similar to that in the current regulations (50 CFR 216.125), for assessing impacts to marine mammals from rocket and missile launches at VAFB. This monitoring plan is described, in detail, in their application (VAFB, 2003). The Air Force will conduct the following monitoring under the regulations.

The monitoring will be conducted by a NMFS-approved marine mammal biologist experienced in surveying large numbers of marine mammals. Monitoring at the haul-out site closest to the launch facility will commence at least 72 hours prior to the launch and continue until at least 48 hours after the launch.

Monitoring for Vandenberg Air Force Base

Biological monitoring at VAFB will be conducted for all launches during the harbor seal pupping season, 1 March to 30 June. Acoustic and biological monitoring will be conducted on new space and missile launch vehicles during at least the first launch, whether it occurs within the pupping season or not. The first three launches of the Delta IV will also be monitored. In addition, the hearing of harbor seals will be tested before and after each launch under a scientific research permit issued under Section 104 of the MMPA, which continues the hearing tests covered under a previous scientific research permit that expired in 2002.

Monitoring will include multiple surveys each day that record, when possible, the species, number of animals, general behavior, presence of pups, age class, gender, and reaction to launch noise, sonic booms or other natural or human-caused disturbances. Environmental conditions such as tide, wind speed, air temperature, and swell will also be recorded. Time-lapse photography or video will be used during daylight launches to document the behavior of mother-pup pairs during launch activities. For launches during the harbor seal pupping season (March through June), follow-up surveys will be made within two weeks of the launch to ensure that there were no adverse effects on any marine mammals. A report detailing the species, number of animals observed, behavior, reaction to the launch noise, time to return to the haul-out site, any adverse behavior and environmental conditions will be submitted to NMFS within 120 days of the launch.

Monitoring for the Northern Channel Islands

Monitoring will be conducted on the northern Channel Islands (San Miguel, Santa Cruz, and Santa Rosa Islands)

whenever a sonic boom over 1.0 psf is predicted (using the most current sonic boom modeling programs) to impact one of the Islands. Monitoring will be conducted at the haul-out site closest to the predicted sonic boom impact area. Monitoring will be conducted by a NMFS-approved marine mammal biologist experienced in surveying large numbers of marine mammals. Monitoring will commence at least 72 hours prior to the launch and continue until at least 48 hours after the launch.

Monitoring will include multiple surveys each day that record the species, number of animals, general behavior, presence of pups, age class, gender, and reaction to launch noise, sonic booms or other natural or human-caused disturbances. Environmental conditions such as tide, wind speed, air temperature, and swell will also be recorded. Due to the large numbers of pinnipeds found on some beaches of SMI, smaller focal groups should be monitored in detail rather than the entire beach population. A general estimate of the entire beach population should be made once a day and their reaction to the launch noise noted. Photography or video will be used during daylight launches to document the behavior of mother-pup pairs or dependent pups during launch activities. During the pupping season of any species affected by a launch, follow-up surveys will be made within two weeks of the launch to ensure that there were no adverse effects on any marine mammals. A report detailing the species, number of animals observed, behavior, reaction to the launch noise, time to return to the haul-out site, any adverse behavior and environmental conditions will be submitted to NMFS within 120 days of the launch.

Reporting Requirements

A report containing the following information must be submitted to NMFS within 120 days after each launch: (1) Date(s) and time(s) of each launch, (2) date(s), location(s), and preliminary findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations, and (3) results of the monitoring programs, including but not necessarily limited to (a) numbers of pinnipeds present on the haul-out prior to commencement of the launch, (b) numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise, (c) the length of time(s) pinnipeds remained off the haul-out or rookery, (d) the numbers of pinniped adults or pups that may have been injured or killed as a result of the launch, and (4) any behavioral modifications by pinnipeds that likely were the result of launch noise or the sonic boom.

An annual report must be submitted no NMFS at the time of renewal of the LOA described in §216.127, that describes any incidental takings under an LOA not reported in the 120–day launch reports, such as the aircraft test program and helicopter operations and any assessments made of their impacts on hauled-out pinnipeds.

A final report must be submitted to NMFS no later than 180 days prior to expiration of these regulations. This report must summarize the findings made in all previous reports and assess both the impacts at each of the major rookeries and the cumulative impact on pinnipeds and any other marine mammals from Vandenberg activities.

Determinations

Based on the evidence provided in the application and this document, NMFS has preliminarily determined the requirements for authorizing the taking, by Level B harassment, of small numbers of marine mammals incidental to rocket and missile launch operations and aircraft overflights at VAFB have been satisfied. The total taking of marine mammals by Level B harassment from launch operations at VAFB over the period of these regulations will have no more than a negligible impact on affected marine mammal stocks. NMFS is assured that the space and missile test launch operations and aircraft overflights from VAFB off California will result, at worst, in temporary modifications in behavior by the affected pinnipeds and possible TTS in hearing of any pinnipeds that are in close proximity to a launch pad during launch. No take by injury and/or death is anticipated, and the potential for permanent hearing impairment is unlikely. NMFS has preliminarily determined that the requirements of section 101(a)(5)(A) of the MMPA have been met and the LOAs can be issued.

National Environmental Policy Act (NEPA)

The U.S. Air Force prepared an EA and issued a Finding of No Significant Impact in 1997, as part of its application for an incidental take authorization. NMFS is reviewing this EA and will prepare its own NEPA document before making a determination on the issuance of these regulations. A copy of the USAF 1997 EA for this activity is available upon request (see **ADDRESSES**).

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of regulations under section 101(a)(5)(A) of the MMPA for this activity. Consultation will be concluded prior to promulgation of a final rule.

Coastal Zone Management Act Consistency

According to the USAF, it has received concurrence from the California Coastal Commission that the VAFB activities described in this document are consistent to the maximum extent practicable with the enforceable policies of the California Coastal Act.

Classification

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

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would apply only to the 30th Space Wing, U.S. Air Force and would have no effect, directly or indirectly, on small businesses. It may affect a small number of contractors providing services on the base, some of which may be small businesses, but the number involved would not be substantial. Further, since the monitoring and reporting requirements are what would lead to the need for their services, the economic impact on them would be beneficial. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of the regulations governing the taking. Because this document contains only a summary of the information provided in the documents available to the public (see **ADDRESSES**), commenters are requested to review these documents before submitting comments.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: November 21, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.120, paragraph (a)(1) is revised to read as follows:

§ 216.120 Specified activity and specified geographical region.

(a) * * *

(1) Launching up to 30 space and missiles vehicles each year from Vandenberg Air Force Base, for a total of up to 150 missiles and rockets over the 5–year authorization period.

* * * * *

3. Section 216.121 is revised to read as follows:

§ 216.121 Effective dates.

Regulations in this subpart are effective from January 1, 2004, through December 31, 2008.

4. In 216.123, paragraph (c) and (d) are revised as follows:

§ 216.123 Prohibitions.

* * * * *

(c) No person in connection with the activities described in § 216.120 shall:

(1) Take any marine mammal not specified in § 216.120(b);

(2) Take any marine mammal specified in § 216.120(b) other than by incidental, unintentional harassment;

(3) Take a marine mammal specified in § 216.120(b) if such take results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under § 216.106.

5. In § 216.124, paragraphs (a)(1)–(3) are revised to read as follows:

§ 216.124 Mitigation.

(a) * * *

(1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting) which may require approaching pinniped rookeries closer than 1,000 ft (305 m).

(2) For missile and rocket launches, holders of Letters of Authorization must avoid, whenever possible, launches during the harbor seal pupping season of March through June, unless constrained by factors including, but not limited to, human safety, national security, or for space vehicle launch trajectory necessary to meet mission objectives.

(3) VAFB must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, and California sea lion pupping seasons, March through June.

* * * * *

6. In § 216.125, paragraphs (b) introductory text, (b)(2)–(b)(5) and (e) are revised and paragraphs (b)(6) and (b)(7) are added to read as follows:

§ 216.125 Requirements for monitoring and reporting.

* * * * *

(b) Holders of Letters of Authorization must designate qualified on-site individuals, approved in advance by the National Marine Fisheries Service, as specified in the Letter of Authorization, to:

* * * * *

(2) For launches during the harbor seal pupping season (March through June), conduct follow-up surveys within 2 weeks of the launch to ensure that there were no adverse effects on any marine mammals,

(3) Monitor haul-out sites on the Northern Channel Islands, if it is determined by modeling that a sonic boom of greater than 1 psf could occur in those areas (this determination will be made in consultation with the National Marine Fisheries Service),

(4) Investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction,

(5) Supplement observations on Vandenberg and on the Northern Channel Islands with video-recording of mother-pup seal responses for daylight launches during the pupping season,

(6) Conduct acoustic measurements of those launch vehicles that have not had sound pressure level measurements made previously, and

(7) Include multiple surveys each day that record the species, number of animals, general behavior, presence of pups, age class, gender and reaction to launch noise, sonic booms or other natural or human caused disturbances, in addition to recording environmental conditions such as tide, wind speed, air temperature, and swell.

* * * * *

(e) An annual report must be submitted at the time of renewal of the LOA, described in § 216.127

* * * * *

7. Section 216.127 is revised to read as follows:

§ 216.127 Renewal of Letters of Authorization.

A Letter of Authorization issued under § 216.126 for the activity identified in § 216.120(a) will be renewed annually upon:

(a) Timely receipt of the reports required under § 216.125(d), if determined by the Assistant Administrator to be acceptable; and

(b) A determination that the mitigation measures required under § 216.124 and the Letter of Authorization have been undertaken.

8. Section 216.128 is revised to read as follows:

§ 216.128 Modifications of Letters of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to a Letter of Authorization subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.120 (b), a Letter of Authorization may be substantively modified without prior notice and opportunity for public comment. A notice will be published in the **Federal Register** subsequent to the action.

[FR Doc. 03–29828 Filed 12–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 697

[I.D. 110102A]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Atlantic Coast Weakfish Fishery; Exempted Fishing Permits (EFPs)

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

ACTION: Notice of intent to issue EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Director, Office of Sustainable Fisheries, NMFS (Director) has received EFP applications from the State of North Carolina to continue work on the first year of a 2-year EFP issued in 2003. The State of North Carolina originally proposed conducting an experimental characterization study using flynets to fish for weakfish in a closed area of the exclusive economic zone (EEZ) south of Cape Hatteras, during 2003 and 2004. Study goals, however, were not met in that first year in 2003 due to poor weather conditions and insufficient availability of fish. Accordingly, the State of North Carolina has requested that they again be given 2 years to complete the study and that the study period be revised to cover the years 2004 and 2005.

DATES: Written comments on the applications must be received on or before December 18, 2003.

ADDRESSES: Send comments to John H. Dunnigan, Director, Office of Sustainable Fisheries (F/SF), NOAA Fisheries, 1315 East-West Highway, Silver Spring, MD 20910. The applications, related documents, including the draft EA, and copies of the regulations under which EFPs are issued may also be requested from this address.

FOR FURTHER INFORMATION CONTACT: Anne Lange 301–713–2334; FAX: 301–713- 0596.

SUPPLEMENTARY INFORMATION: The Director has made a preliminary determination that the EFP applications contain all the required information; that the activities to be authorized under the EFP would be consistent with the goals and objectives of the Atlantic weakfish fishery under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act); and that the applications warrant further consideration. This document requests public input in the form of written comments to NMFS relative to the issuance of EFPs to the State of North Carolina. If granted, these EFPs would authorize a flynet characterization study to be conducted by the North Carolina Division of Marine Fisheries (NCDMF) in a closed area south of Cape Hatteras. Two participating flynet vessels, each with its own EFP and observer aboard, would conduct up to a total of 18 trips per year over each of two seasons, from 15 January through 1 April, in 2004 and 2005, south of Cape Hatteras, for a maximum of 36 trips.

The NCDMF has presently applied for two EFPs in 2004 to conduct the first year of a 2-year characterization study in the closed area in the EEZ south of Cape Hatteras, North Carolina. The NCDMF previously applied, and was granted by NOAA Fisheries, two identical EFPs for 2003 to perform an identical study, but due to inclement weather and insufficient availability of fish, NCDMF was unable to conduct year one of their study in 2003. Hence, NCDMF is reapplying to again begin their study, but in 2004. The previous NCDMF application also sought, and was granted by NOAA Fisheries, a third EFP to test turtle excluder devices (TEDs) in the closed area. Unlike the work involved in the characterization study, NCDMF was able to conclude its testing of TEDs, and is presently analyzing the data gained. Accordingly NCDMF does not presently seek a third EFP, as it did last year, for TED testing.

NOAA Fisheries has authority to grant the requested EFPs under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. 5101 *et seq.*, and regulations at 50 CFR 697.22 concerning the conduct of activities that are otherwise prohibited by the regulations in this part. The prohibited activities for which NCDMF seeks exemption involve weakfish regulations at 50 CFR 697.7(a)(5) that prohibit any person from fishing with a flynet in the Exclusive Economic Zone (EEZ) off North Carolina in a closed area south of Cape Hatteras, as defined by this regulation. This area was closed to flynetters in order to reduce the harvest of the recovering weakfish stock, especially the harvest of juvenile weakfish known to congregate in the closed area. In addition, other prohibitions for which exemption is sought are at 50 CFR 697.7(a)(1) and (2), which prohibits fishing for, harvesting, possessing, or retaining weakfish less than 12 inches (30.5 cm), in the EEZ and at 50 CFR 697.7(a)(3), which prohibits fishing for weakfish coastwide in the EEZ with a minimum mesh size less than 3 1/4–inch (8.3 cm) square stretched mesh (as measured between the centers of opposite knots when stretched taut) or 3 3/4–inch (9.5 cm) diamond stretched mesh for trawls.

Previous Year's EFP

The present application by NCDMF for two EFPs to begin a characterization study is identical to the application for EFPs sought last year by NCDMF to perform this same study. Last year, on December 18, 2002, NMFS issued two EFPs to NCDMF to conduct a flynet characterization study, in cooperation with NMFS, with two flynet vessels using mesh at least as large as defined in the Atlantic States Marine Fisheries Commission's (Commission) Weakfish Fishery Management Plan Amendment 3 (Amendment 3), and at 50 CFR 697.7(a)(3), to collect information on the size and species composition of finfish caught in modified flynets in the closed area. Under last year's EFPs, the NCDMF was to assess the effects, including the species and size composition of the catch, of using larger mesh size nets in the North Carolina flynet fishery if it were to be allowed to resume operations south of Cape Hatteras. The mesh size used in the flynet fishery, prior to the 1997 closure of this area, was significantly smaller than is currently required. This information would have permitted NCDMF, the Commission, and NMFS to properly assess the potential impacts of reopening the closed area to flynets with larger minimum-mesh sizes after management goals have been met and the stock is declared to be restored. Additional terms of the study proposal related to sample design or address concerns raised by the Commission's Weakfish Fishery Management Board and its Technical Committee. The study was to terminate if any cumulative, monthly sample yields juvenile or undersized fish in excess of 10 percent of the total catch for that month. If an annual cap of 175,000 lbs (79,380 kg) on landings of weakfish taken south of Cape Hatteras is reached, the study would end for that year. Multiple tows made on a single trip were to be spatially separated by at least one (1) nautical mile to insure maximum geographic coverage and prevent directing effort on one specific school of fish. The entire contents of each tow on an individual trip were to be kept separate and processed separately at the dock. NMFS observers were to be required on each trip to monitor fishing activity and to record global positioning system coordinates for each tow, interactions with any threatened or endangered species, tow time, depth, water temperature, air temperature, date, and time. NMFS observers were to also record net dimensions and design specifications to document successful designs, if a net was found to effectively avoid catches of undersized fish. In order to determine the ability of these flynets to minimize bycatch of undersized fish, unculled catches were to be sorted by tow for species composition and weight by market category, and sub-samples would be

measured for length frequency. Regulatory discards, including sub-legal weakfish, and non-marketable species, were to be sorted, weighed and a sub-sample would be taken for length frequency. These fish were to be properly disposed of, and would not be sold. ESA and other protected species would have been handled as required by law; observers would have recorded and reported all discarded red drum and striped bass. The flynet characterization was to be terminated if takes (lethal or non-lethal) of loggerhead or Kemp's ridley sea turtles exceeded one half of the numbers (20 and 2) allowed in the Incidental Take Statement of the 1997 BO (that is, 10 or 1, in any one year). Further, analysis of the study data was to be coordinated by NCDMF and NMFS staff and the Commission was to be briefed through annual and final reports that would provide maps of the sample areas overlaid with the location of each tow, species encountered, total weights, numbers, and length frequency distributions of selected species. The final report was also to summarize the findings from each year and attempt to relate variability in catches and species composition with environmental variables. The report was also to summarize all interactions with sea turtles and include a discussion on the use of TEDs in the flynet fishery .

Newly Proposed EFP

Unfortunately, due to poor weather and insufficient availablity of fish, NCDMF was unable to complete its year one experiments in the 2-year study. Accordingly, NCDMF seeks to reapply for EFPs to conduct an identical two year characterization study under identical terms, this time for the 2004 and 2005 years. Specifically, the NCDMF proposes to complete the first year of the 2-year flynet characterization study using the same means and methods as described above for last year's EFP. The flynet characterization study would be conducted in a closed area south of Cape Hatteras by two participating flynet vessels, each with its own EFP and observer aboard, conducting up to a total of 18 trips per year over each of two seasons, from 15 January through 1 April, in 2004 and 2005, for a maximum of 36 trips.

The EFP would exempt up to three vessels from the requirements of the Atlantic weakfish regulations according to the provisions at 50 CFR 600.745 and 697.22, as follows: (1) prohibiting of the use of flynets in the closed area of the EEZ off North Carolina as defined at § 697.7(a)(5); and (2) fishing for, harvesting, possession or retention of any weakfish less than 12 inches (30.5 cm) in total length from the EEZ as specified at § 697.7(a)(1) and (2) for data collection purposes.

The environmental assessment prepared for the proposed flynet characterization study in 2003 found that no significant environmental impacts would result from the proposed action.

Dated: November 26, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–30136 Filed 12–2–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 031125290–3290–01; I.D. 111203D]

RIN 0648–AQ97

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulation to implement the annual harvest guideline for Pacific sardine in the U.S. exclusive economic zone off the Pacific coast for the fishing season January 1, 2004, through December 31, 2004. This harvest guideline has been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific sardine off the Pacific coast.

DATES: Comments must be received by December 17, 2003.

ADDRESSES: Send comments on the proposed rule to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. The report *Stock Assessment of Pacific Sardine with Management Recommendations for 2004* may be obtained at this same address. An environmental assessment/regulatory impact review/initial regulatory flexibility analysis (IRFA) for this proposed rule may be obtained at this same address.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Southwest Region, NMFS, 562–980–4040.

SUPPLEMENTARY INFORMATION: The FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee

(SSC). The Council reviews reports from the Team, Subpanel, and SSC, and then, after providing time for public comment, makes its recommendation to NMFS. The annual harvest guideline and season structure are published by NMFS in the **Federal Register** as soon as practicable before the beginning of the appropriate fishing season. The Pacific sardine season begins on January 1 and ends on December 31 of each year.

The Team meeting took place at the Southwest Fisheries Science Center in La Jolla, CA on October 14, 2003. A public meeting between the Team and the Subpanel was held at the same location that afternoon. The Council reviewed the report at its November meeting in Del Mar, CA and heard comments from its advisory bodies and the public.

Public comments are requested on how the fishery might be conducted for the 2004 fishing season to achieve but not exceed the harvest guideline while minimizing impacts on the harvest of other CPS.

In view of the above, the following would be implemented for the January 1 through December 31, 2004, fishing season.

Based on a biomass estimate of 1,090,587 metric tons (mt)(in U.S. and Mexican waters), using the FMP formula, the harvest guideline for

Pacific sardine in U.S. waters for January 1, 2004, through December 31, 2004, is 122,747 mt. The biomass estimate is slightly higher than last year's biomass estimate; however, the difference between this year's biomass is not statistically significant from the biomass estimates of recent years. Therefore, the impacts of the fishery on the stock will be approximately the same as in the year prior. Similarly, the impacts of the fishery on other components of the environment will be similar to those in 2003.

Under the FMP, the harvest guideline is allocated one-third for Subarea A, which is north of 39° 00′ N. lat. (Pt. Arena, CA) to the Canadian border, and two-thirds for Subarea B, which is south of 39° 00′ N. lat. to the Mexican border. Under this proposed rule, the northern allocation for 2004 would be 40,916 mt; the southern allocation would be 81,831 mt. In 2003, the northern allocation was 36,969 mt and the southern allocation was 73,939 mt.

Normally, an incidental landing allowance of sardine in landings of other CPS is set at the beginning of the fishing season. The incidental allowance would become effective if the harvest guideline is reached and the fishery closed. A landing allowance of sardine up to 45 percent by weight of any landing of CPS is authorized by the FMP. An incidental allowance prevents waste of sardine caught while fishing for other species and protects fishermen from being cited for a violation when sardine occur in catches of other species, while controlling total sardine harvest by reducing the potential to target sardine while claiming to be fishing for other species. Sardine landed with other species also requires sorting at the processing plant, which adds to processing costs. Mixed species in the same load may damage smaller fish. The sardine population was estimated using a modified version of the integrated stock assessment model called Catch at Age Analysis of Sardine Two Area Model (CANSAR TAM). CANSAR-TAM is a forward-casting, age-structured analysis using fishery dependent and fishery independent data to obtain annual estimates of sardine abundance, year-class strength, and age-specific fishing mortality for 1983 through 2003. The CANSAR-TAM was modified to account for the expansion of the Pacific sardine stock northward to include waters off the northwest Pacific coast. Information on the fishery and the stock assessment are found in the report Stock Assessment of Pacific Sardine with Management Recommendations for 2004 (see **ADDRESSES**).

The formula in the FMP uses the following factors to determine the harvest guideline:

1. *The biomass of age one sardine and above.* For 2004, this estimate is 1,090,587 mt.

2. *The cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. *The portion of the sardine biomass that is in U.S. waters.* For 2004, this estimate is 87 percent, based on the average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of fish-spotters.

4. *The harvest fraction.* This is the percentage of the biomass above 150,000 mt that may be harvested. The fraction used varies (5–15 percent) with current ocean temperatures. A higher fraction is used for warmer ocean temperatures, which favor the production of Pacific sardine, and a lower fraction is used for cooler temperatures. For 2004, the fraction was 15 percent based on three seasons of sea surface temperature at Scripps Pier, California.

As indicated above the harvest guideline for U.S. waters is allocated one-third (40,916 mt) to Subarea A, two-thirds (81,831 mt) to Subarea B.

Classification

These proposed specifications are issued under the authority of, and are in accordance with, the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and 50 CFR part 660, subpart I (the regulations implementing the FMP).

This proposed rule has been determined to be exempt for significant for purposes of Executive Order 12866.

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. Specifically, NMFS is requesting that the public provide comments on the range of alternatives considered by NMFS and offer any additional alternatives that NMFS should consider for the Pacific sardine fishery. The IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and in the **SUPPLEMENTARY INFORMATION** of this proposed rule. A harvest guideline is established by the FMP to limit harvests to levels that protect the resource while providing a source of revenue for the fishing industry and other benefits to society over the long term.

The harvest formula in the FMP is conservative and a significantly higher harvest than that allowed by the FMP could be realized without a detrimental effect on the resource, at least in the short term; this could provide substantial economic benefits to the fishing industry. However, there are both biological and economic reasons to restrain harvests. First, there is uncertainty about the effect of expanded harvests in the northern subarea; that fishery takes larger fish that may play an important role in maintenance of resource productivity. Research into the relationship of the northern and southern components is necessary before allowing higher harvests. Second, the harvest guideline derived by the current formula has provided sufficient resources in recent years to satisfy existing markets; therefore, there would not likely be a significant economic benefit from a higher harvest guideline. The best information available on the economics of the CPS fishery indicates that landings and revenue have increased steadily since recovery of the resource began and could increase in 2004 if additional markets were developed. However, landings in 2003 are projected to be similar to the landings in 2001 and 2002, suggesting that markets are saturated. Therefore, there would not likely be a significant increase in harvests even if more fish were made available. That is, there is little opportunity to increase revenue in 2004.

Implementing the 2003 harvest guideline and allocations (i.e., the no action alternative) would keep the fishery at 2003 levels. There would not be much difference between this alternative and the proposed action as the harvest guideline would be quite similar.

Implementing the new harvest guideline for 2004 without allocating to the different subareas would set up a derby fishery without regard to the allocation procedures in the FMP. The fisheries in Subarea A and in Subarea B could harvest without restriction. There would be a possibility that the fishery in the northern subarea would harvest sardine at a level that would result in either a shift of fishery benefits from south to north or an early closure of the coastwide fishery. There would be increased revenue in the north at the expense of the southern fishery. However, premature closure would also result in substantial idle purse seine capacity in the southern subarea, where the fishery has traditionally been more active in the fall and winter.

Setting a harvest guideline above that authorized by the FMP is conceivable if

the biomass and the harvest guideline were low and recruitment high. The harvest guideline is based on greater than age 1 plus sardine. If the biomass of sardine less than age 1 were known to be high, then some economic benefits would accrue to the fishing industry by allowing a harvest greater than that permitted by the formula in the FMP based on the premise that these fish are short-lived and should be harvested when available. If this situation occurred, economic benefits could be conferred on the fishing industry with the possibility of no negative biological impact. However, this approach faces two difficulties: (1) The higher the harvest is above that authorized by the FMP, the greater the potential for exacerbating a decline of the resource. The risk would be small at high biomass levels such as those of recent years, but as noted there is uncertainty, especially concerning the relationship between the northern and southern components of the stock. Further, there is no need for a higher harvest guideline at this time because, under the current approach, enough sardine has been available for harvest to satisfy existing market. (2) Such an approach (allowing higher harvests) would most likely be viewed favorably by industry if the biomass (and ensuing harvest guideline) were low and the fishery faced economic hardship from a lack of other fishing opportunities. In this situation, the potential for negative biological impacts is substantial. The uncertainty of the estimate of sardine less than age 1 is high. The estimates of biomass and/or recruitment could be high, but natural mortality is high, and how much biomass a zero age class will contribute to the biomass of the resource is uncertain. This increases the likelihood of negative biological impacts. In the final analysis, however, this alternative would have similar results as the proposed action. The proposed harvest guideline is at a level that allows maximum use by existing markets; therefore, there would not likely be significant benefits from a higher harvest guideline. If information on Pacific sardine became available that had not been previously considered indicating a risk of following the harvest formula in the FMP, a more conservative harvest guideline might be implemented to protect the resource. There is no such information at this time. The harvest formula in the FMP, however, sets a conservative harvest policy. Setting a harvest guideline lower than required by the FMP would not likely bestow significant biological benefits at current biomass levels.

In summary, there are no factors that would justify deviation from the harvest guideline formula and allocation approach of the FMP. The requirements of the FMP that specify a harvest guideline action based on scientific data and a formula in the FMP continue to be valid. Setting a harvest guideline less than the proposed harvest guideline could have significant economic impacts. A reasonable assumption is that the harvest guideline will be attained. At an ex-vessel price of $114/mt (2001–2002 average), this would yield revenue of $13.9 million. Every 10,000 mt reduction in landings would reduce revenue by $1.14 million. Setting a harvest guideline above the level derived could generate increased landings (though that is unlikely with current market conditions) but at an unacceptable level of risk of economic dislocation (if northern fisheries expanded too quickly) and ecological difficulties in the future (if the stock is less resilient than thought or the northern component of the stock is more important than is now known).

This proposed rule does not duplicate overlap, or conflict with other Federal rules. There are no reporting, recordkeeping, or other compliance requirements in the proposed rule.

Approximately 100 vessels participate in the CPS fishery off the U.S. West Coast. All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no economic impacts resulting from disproportionality between small and large vessels under the proposed action. A limited entry fishery occurs south of 39° N. Lat. A total of 65 vessels are permitted to participate in the limited entry fishery. An open access fishery exists north of 39° N. Lat. in which about 15 vessels participate. These are also small businesses. Vessels harvesting CPS for bait are also small businesses but are unregulated under the FMP.

Fisheries for Pacific sardine occur from Monterey, CA, south throughout the year and off Oregon and Washington in Summer. Since 2000, most of the CPS fleet has obtained an average of 30 percent of its total revenue from Pacific sardine. This has occurred during a period in which there has been an increase in demand for market squid, as well as new markets for sardine that developed since 2000. The average annual revenue from Pacific sardine has been $9.1 million (2002 dollars) during the last 3 years (2000 through 2002). This is the revenue the industry might expect on average given the amount of sardine available for harvest and market demand. As of October 14, 2003, 65,000 mt had been landed. Based on historical landings, landings may reach 90,000 mt, which is below the harvest guideline. Known factors that have influenced the landings in 2003 is an outbreak of domoic acid in California, which makes Pacific sardine unmarketable, and the availability of market squid in the summer, which provides higher revenue to the fishing industry than sardine. If the harvest guideline is reached during the 2004 fishing season, there will be an increase of $3.7 million in ex-vessel revenue above that of the 2003 fishing season. With a harvest guideline of 122,747 mt and an average ex-vessel price of $114.00 per ton, potential revenue could be $14.0 million. The harvest guideline for the 2003 fishing season was 110,908 mt; however, landings are expected to reach only 90,000 or 95,000 mt by December 31, 2003. Market demand has not supported increased harvests, for the reasons noted above. The proposed action will yield potentially higher revenue (about $3 million) from Pacific sardine than the current year if the full harvest guideline is taken and prices remain constant.

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

Dated: November 26, 2003.

Rebecca Lent,

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

[FR Doc. 03–30137 Filed 12–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 112603A]

Pelagic Fisheries Managed Under the Fishery Management Plan, for the Pelagic Fisheries of the Western Pacific Region

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

ACTION: Supplemental Notice of Intent (NOI) to prepare a Supplemental Environmental Impact Statement (SEIS); Notice of compressed schedule under alternative procedures approved by the Council on Environmental Quality (CEQ).

SUMMARY: In an NOI published on October 17, 2003, the Western Pacific Fishery Management Council (Council) and NMFS announced their intent to

prepare an SEIS in accordance with the National Environmental Policy Act of 1969 (NEPA) on the Federal management of pelagic fishery resources in the Western Pacific Region. The Council and NMFS supplement that NOI and now announce their intent to phase, upon completion of the public scoping period identified in the October 17, 2003 NOI, the SEIS and associated NEPA processes into two separate SEISs and two separate NEPA processes. The Council and NMFS also announce their intent to apply alternative procedures approved by the CEQ that will allow for expedited completion of one of the SEISs, specifically, on proposed management measures for the Hawaii-based longline fishery and it's potential impact on protected sea turtle populations. The remaining management issues identified in the public scoping process will be addressed in a separate SEIS made available for comment and review under normally applicable NEPA procedures. Notwithstanding these new intents, the public scoping process and schedule identified in the October 17, 2003, NOI, including the times and locations of public scoping meetings, remain in effect and apply to both NEPA processes identified above.

DATES: Written comments on the issues, priorities, range of alternatives, and impacts that should be discussed in either of the two SEISs must be received by December 15, 2003. See **SUPPLEMENTARY INFORMATION** for discussion on timing and dates associated with the alternative procedures. See the October 17, 2003 NOI for specific dates, times, and locations of the public scoping meetings.

ADDRESSES: Send written comments to Kitty Simonds, Executive Director, WPFMC, 1164 Bishop St. Suite 1400, Honolulu, HI 96813 or to Samuel Pooley, Acting Regional Administrator, NMFS, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu HI 96814. Comments may also be sent via facsimile (fax) to the Council at (808) 522–8228 or to the Pacific Islands Regional Office at (808) 973–2941. Comments must be received by December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, Executive Director, WPFMC, (808) 522–8220 or Samuel Pooley, Acting Regional Administrator, NMFS, (808) 973–2937.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the United States has exclusive management authority over all living marine resources found within the Exclusive Economic Zone (EEZ). The management of these marine resources found within the EEZ with the exception of sea birds and some marine mammals, is vested in the Secretary of Commerce (Secretary). Eight Regional Fishery Management Councils prepare fishery management plans which are reviewed for approval and implementation by the Secretary. The Western Pacific Council has the responsibility to prepare fishery management plans for fishery resources in the EEZ of the Western Pacific Region.

The pelagic fisheries that occur in the EEZ and on the high seas of the Western Pacific Region have been managed under the Fishery Management Plan for the Pelagics Fisheries of the Western Pacific Region (FMP) and its amendments since 1986. Managed resources include both marketable (primarily billfish and tuna), and non-marketable (primarily sharks) species. Fisheries managed include pelagic longline, troll, handline, pole-and-line (bait boat), and charter boat fisheries. Management measures employed include gear restrictions, vessel size limitations, time and area closures, access limitations and other measures.

The largest fishery managed under the FMP is the Hawaii-based, limited-access pelagic longline fishery. Regulations imposed on this fishery in 2001 eliminated the ''shallow set'' component of this fishery that targeted swordfish. The remaining component of this fishery is a ''deep set'' tuna-targeting fishery. On August 31, 2003, the Memorandum Opinion issued in *Hawaii Longline Assoc.* v. *NMFS* (D. D.C., Civ No. 01–765), invalidated the June 12, 2002 (67 FR 40232) rules as well as the November 15, 2002, Biological Opinion for Pelagic Fisheries of the Western Pacific and the associated incidental take statement. On October 6, 2003, the Court stayed the August 31, 2003 Order, and reinstated the regulations and BiOp until April 1, 2004 (D.D.C. Civ No. 01–0765).

The October 17, 2003, NOI (68 FR. 59771) highlighted a number of issues concerning pelagic fisheries management in the Western Pacific Region. Particular issues mentioned included pelagic longline fisheries interactions with protected species, billfish-related issues, fish aggregation devices, and an emerging industrial-scale squid fishery. However, as a result of Court orders affecting management of the fishery, the Council and NMFS are considering management measures and regulations that must be in place by April 1, 2004.

Consequently, two SEISs, both supplementing the March 30, 2001 Final EIS on the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region, will be developed. The SEIS being developed under alternative procedures will address the Hawaii-based longline fishery and it's potential impact on endangered and threatened sea turtle populations. The other issues mentioned in the October 17, 2003, NOI, such as seabird interactions, billfish-related issues, fish aggregation devices, and industrial-scale squid fishing, will be addressed in a separate SEIS prepared in accord with standard NEPA procedures.

Without compressing the schedule, the agency is not able to comply with prescribed time periods required by NEPA. Specifically, based on a schedule accommodating all regulatory requirements, the agency is not able to provide the full public comment period of 45 days for a draft SEIS (40 CFR 1506.10(2)(d)), or the full review period for the final SEIS prior to the agency decision (40 CFR 1506.10(b)(1–2)).

Consequently, NMFS proposed alternative procedures to CEQ. As a matter of practice, the CEQ looks at three factors in the context of requests for alternative procedures for a SEIS(s): (a) Whether the agency can show that it faces extremely difficult timing considerations that it could not have reasonably foreseen; (b) whether considerations of reflected national policy concerns outweigh any burden to the public caused by a deviation from the normal process; and (c) whether the agency is committed to providing effective alternative means for insuring public and agency review. NMFS satisfied the CEQ's criteria for alternative procedures and on November 20, 2003, the CEQ approved NMFS's request. The alternative procedures include that the standard 45-day public comment period for the SEIS will be shortened to 30 days, and the standard 30-day review period between the final SEIS and the agency's Record of Decision may be reduced by as much as 26 days.

As part of the alternative procedures for public input, the Council and NMFS have coordinated several opportunities for public involvement in the NEPA process. Examples include public scoping meetings conducted throughout the Western Pacific Region from October 21, 2003 through December 4, 2003. In addition, opportunities for public involvement and comment have been solicited at several meetings, including the 119th Council meeting, 120th Council meeting, the 121st Council meeting, and at a series of public

meetings convened by the Council's Sea Turtle Conservation Special Advisory Committee.

The SEIS will analyze, among other things, additional alternatives that include an abolition or modification to the southern area closure; the restoration of the swordfish fishery at some reduced level; mitigation measures such as circle hooks and mackerel bait known to reduce interaction rates of sea turtles with longline gear; international conservation measures to increase sea turtle recruitment; and an analysis on the potential impact of such alternatives on the continued existence of endangered and threatened sea turtles.

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

Dated: November 26, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–30135 Filed 12–2–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–3287–01; I.D. 111703C]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Proposed 2004 Harvest Specifications for Groundfish

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

ACTION: Proposed 2004 harvest specifications for groundfish; apportionment of Reserves; request for comments.

SUMMARY: NMFS proposes 2004 harvest specifications and prohibited species catch (PSC) allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits for groundfish during the 2004 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the BSAI.

DATES: Comments must be received by January 2, 2004.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments also may be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the draft Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action are available from NMFS (*see* **ADDRESSES**) and comments must be received by January 2, 2004. Copies of the final 2002 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2002, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809), or from its homepage at *http://www.fakr.noaa.gov/npfmc.*

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228 or e-mail at *mary.furuness@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background for the 2004 Proposed Harvest Specifications

Groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 679 that implement the FMP. The Council prepared the FMP and NMFS approved it under the Magnuson-Stevens Fishery Conservation and Management Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and the ''other species'' category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (*see* § 679.20(a)(1)(i)). Regulations at § 679.20(c)(1) further require NMFS to solicit public comment on proposed annual TACs and apportionments thereof, PSC allowances and prohibited species quota (PSQ) reserves established by § 679.21, seasonal allowances of pollock TAC, including pollock Community Development Quota (CDQ), and CDQ reserve amounts established by § 679.20(b)(1)(iii) and to publish proposed specifications in the **Federal Register**. The proposed specifications set forth in Tables 1 through 13 of this action satisfy these requirements. For 2004, the proposed sum of TACs is 1,998,443 mt.

Under § 679.20(c)(3), NMFS will publish the final annual specifications for 2004 after (1) considering comments received within the comment period (see DATES), (2) consulting with the Council, which will occur at its next meeting beginning the week of December 8, 2003, and (3) considering new information presented in the EA and the final 2003 SAFE reports prepared for the 2004 groundfish fisheries.

With some exceptions, regulations at § 679.20(c)(2)(ii) require that one-fourth of each proposed initial TAC (ITAC) amount and apportionment thereof, one-fourth of each CDQ reserve established under § 679.20(b)(1)(iii), and one-fourth of each proposed PSC allowance established under § 679.21, become available at 0001 hours, Alaska local time (A.l.t.), January 1, on an interim basis and remain in effect until superseded by the final specifications. Regulations at § 679.20(c)(2)(ii) (A) and (B) require that the proposed first seasonal allowance of non-CDQ and CDQ pollock, Pacific cod and Atka mackerel becomes available at 0001 hours, A.l.t., January 1 on an interim basis and remains in effect until superseded by the final specifications. Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for either the hook-and-line and pot gear sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota (IFQ) program. Interim TAC specifications and apportionments thereof for the 2004 fishing year will be published in a separate **Federal Register** notice.

Other Rules Affecting the 2004 Specifications

In October 2003, the Council discussed Aleutian Islands pollock fishery management, but made no recommendation to close or open the fishery in 2004. The Council set the proposed Aleutian Islands pollock TAC at 2003 amounts, which is for incidental catch only. The Council may consider apportionment of the TAC of several rockfish species in the Aleutian Islands subarea among the Eastern, Central, and Western Aleutian Districts and separating the shortraker and rougheye rockfish TAC.

Amendment 77 to the FMP, approved by the Secretary of Commerce on October 20, 2003, provides for apportioning the BSAI Pacific cod TAC among hook-and-line and pot gears sector. Table 4 lists the proposed 2004 allocations and seasonal apportionments of the Pacific cod ITAC based on regulations that would implement Amendment 77. For more

information on Amendment 77, see the proposed rule at 68 FR 49416, August 18, 2003. A final rule implementing Amendment 77 was published on December 1, 2003 68 FR 67056 and will be effective by January 1, 2004.

Proposed Acceptable Biological Catch (ABC) and TAC Specifications

The proposed ABC levels are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABCs and overfishing levels (OFLs) involves sophisticated statistical analyses of fish populations and is based on a successive series of 6 levels, or tiers, of reliable information available to fishery scientists.

The best information currently available is set forth in Appendix A of the final SAFE report for the 2003 BSAI groundfish fisheries dated November 2002 (*see* **ADDRESSES**). Information on the status of stocks will be updated with the 2003 survey results and reconsidered by the Plan Team in November 2003 for the 2003 SAFE reports. The final harvest specifications will be based on the 2003 SAFE reports.

In October 2003, the Scientific and Statistical Committee (SSC), Advisory Panel (AP), and Council reviewed the Plan Team's preliminary recommendations to project 2003 biomass amounts, as identified in the 2002 SAFE, for the proposed 2004 ABC, OFL, and TAC amounts. The SSC concurred with the Plan Team's recommendations, which estimates the proposed ABCs and OFLs by using a projection of 2003 groundfish harvest with the November 2002 SAFE report model projections of 2003 ABCs for groundfish stocks managed at tiers 1–3. The Council adopted the OFL and ABC amounts recommended by the SSC (Table 1). The Council also adopted the AP's recommendation that the 2004 proposed TACs be set equal to the 2003 TACs, except for sablefish, Pacific ocean perch, and Atka mackerel. Recognizing anticipated changes in the ABCs for these species, the AP recommended and the Council adopted a decrease in the TACs for sablefish, Pacific ocean perch, and Atka mackerel. The Council adopted the AP's recommendation to use the 2003 PSC allowances for 2004. The Council will reconsider these amounts in December 2003, after the Plan Team incorporates new status of stocks information into a final SAFE report for the 2004 BSAI groundfish fishery. None of the Council's TAC recommendations for 2004 exceed the recommended ABC for any species category. Therefore, NMFS finds that the Council's recommendations for proposed 2004 OFLs, ABCs, and TACs are consistent with the best available information on the biological condition of the groundfish stocks.

Table 1 lists the proposed 2004 OFL, ABC, and TAC amounts for groundfish in the BSAI. The proposed apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1.—PROPOSED 2004 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA (BSAI) [1]

[All amounts are in metric tons]

Species and area	Overfishing level	ABC	TAC	ITAC [2]	CDQ reserve [3]
Pollock: [4]					
Bering Sea (BS) [2]	2,636,000	2,127,700	1,491,760	1,342,584	149,176
Aleutian Islands (AI) [2]	52,600	39,400	1,000	1,000	.....
Bogoslof District	45,300	4,070	50	50	.....
Pacific cod: BSAI	359,000	245,000	207,500	176,375	15,563
Sablefish: [5]					
BS	3,818	2,658	2,658	1,131	265
AI	4,082	2,842	2,842	603	431
Atka mackerel:					
BSAI	104,100	61,600	59,111	50,244	4,433
Western AI	.....	22,479	19,990	16,992	1,499
Central AI	.....	28,708	28,708	24,402	2,153
Eastern AI/BS	.....	10,413	10,413	8,851	781
Yellowfin sole: BSAI	130,000	109,600	83,750	71,188	6,281
Rock sole: BSAI	119,400	99,900	44,000	37,400	3,300
Greenland turbot:					
BSAI	16,755	6,900	4,000	3,400	300
BS	.....	4,600	2,680	2,278	201
AI	.....	2,300	1,320	1,122	99
Arrowtooth flounder: BSAI	175,800	142,200	12,000	10,200	900
Flathead sole: BSAI	74,100	61,100	20,000	17,000	1,500
Other flatfish: [6] BSAI	21,400	16,000	3,000	2,550	225
Alaska plaice: BSAI	166,300	138,200	10,000	8,500	750
Pacific ocean perch:					
BSAI	17,600	14,900	13,932	11,842	1,045
BS	.....	2,378	1,410	1,199	106
Western AI	.....	5,773	5,773	4,907	433
Central AI	.....	3,296	3,296	2,802	247
Eastern AI	.....	3,454	3,454	2,936	259
Northern rockfish:					
BSAI	9,468	7,101	.....	.....	.....
BS	.....	.....	121	103	9
AI	.....	.....	5,879	4,997	441
Shortraker/rougheye:					
BSAI	1,289	967	.....	.....	.....
BS	.....	.....	137	116	10

TABLE 1.—PROPOSED 2004 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA (BSAI) [1]—Continued

[All amounts are in metric tons]

Species and area	Overfishing level	ABC	TAC	ITAC [2]	CDQ reserve [3]
AI	.....	.....	830	706	62
Other rockfish: [7].					
BS	1,280	960	960	816	72
AI	846	634	634	539	48
Squid: BSAI	2,620	1,970	1,970	1,675	.....
Other species: [8] BSAI	81,100	43,300	32,309	27,463	2,423
Total	4,002,858	3,127,003	1,998,443	1,770,482	187,225

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these specifications, the Bering Sea (BS) subarea includes the Bogoslof District.

[2] Except for pollock and the portion of the sablefish TAC allocated to hook-and-line and pot gear, 15 percent of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves. The Aleutian Islands (AI) subarea and the Bogoslof District are closed to directed fishing for pollock. The amounts specified are for incidental catch amounts only, and are not apportioned by season, sector or put into a reserve.

[3] Except for pollock and the hook-and-line or pot gear allocation of sablefish, one half of the amount of the TACs placed in reserve, or 7.5 percent of the TACs, is designated as a CDQ reserve for use by CDQ participants (see §§ 679.20(b)(1)(iii) and 679.31).

[4] The American Fisheries Act (AFA), § 679.20(a)(5)(i)(A)(*1*), requires that 10 percent of the annual pollock TAC be allocated as a directed fishing allowance for the CDQ sector. NMFS then subtracts 3.5 percent of the remainder as an incidental catch allowance for pollock, which is not apportioned by season or area. The remainder of the TAC is further allocated by sector as follows: inshore—50 percent; catcher/processor—40 percent; and motherships—10 percent.

[5] Regulations at § 679.20(b)(1) do not provide for the establishment of an ITAC for the hook-and-line and pot gear allocation for sablefish. The ITAC for sablefish reflected in Table 1 is for trawl gear only. Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear is reserved for use by CDQ participants (see § 679.20(b)(1)(iii)).

[6] ''Other flatfish'' includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder and Alaska plaice.

[7] ''Other rockfish'' includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

[8] ''Other species'' includes sculpins, sharks, skates and octopus. Forage fish, as defined at § 679.2, are not included in the ''other species'' category.

Reserves and the Incidental Catch Allowance (ICA) for Pollock

Regulations at § 679.20(b)(1)(i) require that 15 percent of the TAC for each target species or species group, except for pollock and the hook-and-line and pot gear allocation of sablefish, be placed in a non-specified reserve. Regulations at § 679.20(b)(1)(iii) require that one half of each TAC amount placed in the non-specified reserve (7.5 percent), with the exception of squid, be allocated to the groundfish CDQ reserve and that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Regulations at § 679.20(a)(5)(i)(A) specify how the pollock TAC apportioned to the Bering Sea Subarea, after subtraction of the 10 percent CDQ reserve under § 679.31(a), will be allocated. With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the CDQ reserves are not further apportioned by gear. Regulations at § 679.21(e)(1)(i) also require that 7.5 percent of each PSC limit, with the exception of herring, be withheld as a PSQ reserve for the CDQ fisheries. Regulations governing the management of the CDQ and PSQ reserves are set forth at §§ 679.30 and 679.31.

Under § 679.20(a)(5)(i)(A)(*1*), NMFS allocates a pollock ICA of 3.5 percent of the pollock TAC after subtraction of the 10 percent CDQ reserve. This allowance is based on an examination of the incidental catch of pollock in non-pollock target fisheries from 1998 through 2003. During this 6-year period, the incidental catch of pollock ranged from a low of 2 percent in 2003, to a high of 5 percent in 1999, with a 6-year average of 3 percent. Because these incidental percentages are contingent on the relative amounts of other groundfish TACs, NMFS will be better able to assess the ICA amount when the Council makes final ABC and TAC amount recommendations in December.

The remainder of the non-specified reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the ''other species'' category during the year, providing that such reapportionments do not result in overfishing, see § 679.20(b)(1)(ii).

Pollock Allocations Under the American Fisheries Act (AFA)

Regulations at § 679.20(a)(5)(i)(A)(*1*) require that 10 percent of the BSAI pollock TAC be allocated as a directed fishing allowance to the CDQ program. The remainder of the BSAI pollock TAC, after the subtraction of an allowance for the incidental catch of pollock by vessels, including CDQ vessels, harvesting other groundfish species, is allocated as follows: 50 percent to catcher vessels harvesting pollock for processing by the inshore component, 40 percent to catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component, and 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component. These proposed amounts are listed in Table 2.

The AFA also contains several specific requirements concerning pollock and pollock allocations under § 679.20(a)(5)(i)(A)(*4*). First, 8.5 percent of the pollock allocated to the offshore AFA catcher/processor sector will be available for harvest by AFA catcher vessels with offshore sector endorsements, unless the Regional Administrator receives a cooperative contract that provides for the distribution of harvest between catcher/processors and catcher vessels in a manner agreed to by all members. Second, AFA catcher/processors not listed in the AFA are limited to harvesting not more than 0.5 percent of the pollock allocated to the catcher/processor sector. Table 2 lists the proposed 2004 allocations of pollock TAC as prescribed by the AFA. Other provisions of the AFA, including

inshore pollock cooperative allocations and listed catcher/processor and catcher vessel harvesting sideboard limits, are found in Tables 8 through 13.

Table 2 also lists seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest within the SCA, as defined at § 679.22(a)(7)(vii), is limited to 28 percent of the annual directed fishing allowance (DFA) until April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of the SCA before April 1 or inside the SCA after April 1. If the 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1. The A season pollock SCA harvest limit will be apportioned to each industry sector in proportion to each sector's allocated percentage of the DFA as set forth in the AFA. These proposed amounts, by sector, are listed in Table 2.

TABLE 2.—PROPOSED 2004 ALLOCATIONS OF THE POLLOCK TAC AND DIRECTED FISHING ALLOWANCE (DFA) TO THE INSHORE, CATCHER/PROCESSOR, MOTHERSHIP, AND CDQ COMPONENTS[1]

[All amounts are in metric tons]

Area and sector	2004 allocations	A season[1]		B season[1]
		A season DFA (40% of annual DFA)	SCA harvest limit[2]	B season DFA (60% of annual DFA)
Bering Sea subarea	1,491,760	.....	.....	.....
CDQ	149,176	59,670	41,769	89,506
ICA[1]	46,990	.....	.....	.....
AFA Inshore	647,797	259,119	181,383	388,678
AFA Catcher/Processors[4]	518,237	207,295	145,106	310,942
Catch by C/Ps	474,187	189,675	.....	284,512
Catch by CVs[4]	44,050	17,620	.....	26,430
Unlisted C/P Limit[5]	2,591	1,036	.....	1,555
AFA Motherships	129,559	51,824	36,277	77,736
Excessive Harvesting Limit[6]	226,729	.....	.....	.....
Excessive Processing Limit[7]	388,678	.....	.....	.....
Total Bering Sea DFA	1,491,760	577,908	404,535	866,862
Aleutian Islands ICA[8]	1,000	.....	.....	.....
Bogoslof District ICA[8]	50	.....	.....	.....

[1] Under § 679.20(a)(5)(i)(A), after subtraction for the CDQ reserve—10 percent and the ICA—3.5 percent, the pollock TAC is allocated as a DFA as follows: inshore component—50 percent, catcher/processor component—40 percent, and mothership component—10 percent. The A season, January 20–June 10, is allocated 40 percent of the DFA and the B season, June 10–November 1 is allocated 60 percent of the DFA.

[2] No more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[4] Under § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) delivering to listed catcher/processors.

[5] Under § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited from exceeding a harvest amount of 0.5 percent of the DFA allocated to the AFA catcher/processors sector.

[6] Regulations at § 679.20(a)(5)(i)(A)(*6*) require that NMFS establish an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs.

[7] Regulations at § 679.20(a)(5)(i)(A)(*7*) require that NMFS establish an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs.

[8] The Aleutian Islands subarea and the Bogoslof District are closed by the proposed specifications to directed fishing for pollock. The amounts specified are for incidental catch amounts only, and are not apportioned by season or sector.

Allocation of the Atka Mackerel TAC

Under § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea Atka mackerel ITAC may be allocated to the jig gear fleet. The amount of this allocation is determined annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended and NMFS proposes that 1 percent of the Atka mackerel ITAC in the Eastern Aleutian District and the Bering Sea subarea be allocated to the jig gear fleet in 2004. Based on an ITAC of 8,851 mt, the jig gear allocation is 89 mt.

Regulations implementing Steller sea lion protection measures at § 679.20(a)(8)(ii)(A) apportion the Atka mackerel ITAC into two equal seasonal allowances. After subtraction of the jig gear allocation, the first allowance is made available for directed fishing from January 1 to April 15 (A season), and the second seasonal allowance is made available from September 1 to November 1 (B season)(Table 3).

Under § 679.20(a)(8)(ii)(C)(*1*), the Regional Administrator will establish a harvest limit area (HLA) limit of no more than 60 percent of the seasonal TAC for the Western and Central Aleutian Districts. A lottery system is used for the HLA Atka mackerel directed fisheries to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over two areas, *see* § 679.20(a)(8)(iii).

TABLE 3.—PROPOSED 2004 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, AND CDQ RESERVE OF THE BSAI ATKA MACKEREL TAC[1]

[All amounts are in metric tons]

Subarea and component	TAC	CDQ reserve	ITAC	Seasonal allowances[2]			
				A season[3]		B season[3]	
				Total	HLA limit[4]	Total	HLA limit[4]
Western Aleutian District	19,990	1,499	16,992	8,496	5,097	8,496	5,097
Central Aleutian District	28,708	2,153	24,402	12,201	7,321	12,201	7,321
Eastern AI/BS subarea[5]	10,413	781	8,851	.....	.....	.....	.....
Jig (1%)[6]	.....	.....	89	.....	.....	.....	.....
Other gear (99%)	.....	.....	8,763	4,381	.....	4,381	.....
Total	59,111	4,433	50,244	25,078	.....	25,078	.....

[1] Regulations at §§ 679.20(a)(8)(ii) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.
[2] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.
[3] The A season is January 1 to April 15 and the B season is September 1 to November 1.
[4] Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2004, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.
[5] Eastern Aleutian District and the Bering Sea subarea.
[6] Regulations at § 679.20(a)(8)(i) require that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea ITAC be allocated to the jig gear fleet. The proposed amount of this allocation is 1 percent. The jig gear allocation is not apportioned by season.

Allocation of the Pacific Cod TAC

Under § 679.20(a)(7)(i)(A), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear. Under regulations at § 679.20(a)(7)(i)(B), the portion of the Pacific cod TAC allocated to trawl gear is further allocated 50 percent to catcher vessels and 50 percent to catcher/processors. Under regulations at § 679.20(a)(7)(i)(C)(1), a portion of the Pacific cod allocated to hook-and-line or pot gear is set aside as an ICA of Pacific cod in directed fisheries for groundfish using these gear types. Based on anticipated incidental catch in these fisheries, NMFS proposes an ICA of 500 mt. The remainder of Pacific cod is further allocated to vessels using hook-and-line or pot gear as the following DFAs: 80 percent to hook-and-line catcher/processors, 0.3 percent to hook-and-line catcher vessels, 18.3 percent to pot gear vessels, and 1.4 percent to catcher vessels under 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear. The final rule implementing Amendment 77 will split the pot gear sector share of the DFA: 3.3 percent to pot catcher/processors and 15 percent to pot catcher vessels. A final rule implementing Amendment 77 was published on December 1, 2003 68 FR 67086 and will be effective by January 1, 2004.

Due to concerns about the potential impact of the Pacific cod fishery on Steller sea lions and their critical habitat, the Pacific cod fisheries are dispersed by the apportionment of the ITAC into seasonal allowances (*see* §§ 679.20(a)(7)(iii) and 679.23(e)(5)). For most non-trawl gear the first seasonal allowance, 60 percent of the ITAC, is made available for directed fishing from January 1 to June 10, and the second seasonal allowance, 40 percent of the ITAC, is made available from June 10 to December 31. The regulations implementing Amendment 77 will establish three seasonal allowances for jig gear: the first seasonal allowance, 40 percent of the ITAC, is January 1 to April 30; the second seasonal allowance, 20 percent of the ITAC, is April 1 to August 31; and the third seasonal allowance, 40 percent of the ITAC, is August 31 to December 31. Amendment 77 will also allow the reallocation of any projected unused portion of a seasonal allowance of Pacific cod for vessels using jig gear to catcher vessels less than 60 ft (18.3 m) LOA using hook-and-line or pot gear. No seasonal harvest constraints are imposed on the Pacific cod fishery prosecuted by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is January 20 to April 1 and is allocated 60 percent of the ITAC; the second season, April 1 to June 10, and the third season, June 10 to November 1, are each allocated 20 percent of the ITAC. The trawl catcher vessel allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processor allocation is allocated 50 percent in the first season, 30 percent in the second season, and 20 percent in the third season. Table 4 lists the proposed 2004 allocations and seasonal apportionments of the Pacific cod ITAC. NMFS and the Council propose that any unused portion of a seasonal Pacific cod allowance will become available at the beginning of the next seasonal allowance.

TABLE 4.—PROPOSED 2004 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

Gear sector	Percent	Share of sector gear total (mt)	Subtotal percentages for gear sectors	Share of gear sector total (mt)	Seasonal apportionment[1]	
					Date	Amount (mt)
Total hook-and-line and pot gear allocation of Pacific cod TAC.	51	89,951	.....	.....		.....
Incidental Catch Allowance	.....	.....	.....	500		.....
Processor and Vessel sub-total	.....	89,451	.....	.....		.....

TABLE 4.—PROPOSED 2004 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC—Continued

Gear sector	Percent	Share of sector gear total (mt)	Subtotal percentages for gear sectors	Share of gear sector total (mt)	Seasonal apportionment [1]	
					Date	Amount (mt)
Hook-and-line Catcher/Processors	.....	.....	80	71,561	Jan 1–Jun 10	42,937
					Jun 10–Dec 31	28,624
Hook-and-Line Catcher Vessels	.....	.....	0.3	268	Jan 1–Jun 10	161
					Jun 10–Dec 31	107
Pot Catcher/Processors	.....	.....	3.3	2,952	Jan 1–Jun 10	1,771
					Sept 1–Dec 31	1,181
Pot Catcher Vessels	.....	.....	15	13,418	Jan 1–Jun 10	8,051
					Sept 1–Dec 31	5,367
Catcher Vessels <60 feet LOA using Hook-and-line or Pot gear.	.....	.....	1.4	1,252		.....
Trawl Gear Total	47	82,896	.....	.....		.....
Trawl Catcher Vessel	.....	.....	50	41,448	Jan 20–Apr 1	29,014
					Apr 1–Jun 10	4,145
					Jun 10–Nov 1	8,290
Trawl Catcher/Processor	.....	.....	50	41,448	Jan 20–Apr 1	20,724
					Apr 1–Jun 10	12,434
					Jun 10–Nov 1	8,290
Jig	2	3,528	.....	.....	Jan 1–Apr 1	1,411
					Apr 1–Aug 31	706
					Aug 31–Dec 31	1,411
Total	100	176,375	.....	.....		

[1] For most non-trawl gear the first season is allocated 60 percent of the ITAC and the second season is allocated 40 percent of the ITAC. For jig gear, the first season and third seasons are each allocated 40 percent of the ITAC and the second season is allocated 20 percent of the ITAC. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is allocated 60 percent of the ITAC and the second and third seasons are each allocated 20 percent of the ITAC. The trawl catcher vessels' allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processors' allocation is allocated 50 percent in the first season, 30 percent in the second season and 20 percent in the third season. Any unused portion of a seasonal Pacific cod allowance will be reapportioned to the next seasonal allowance.

Allocation of the Shortraker and Rougheye Rockfish TAC

Under § 679.20(a)(9), the ITAC of shortraker rockfish and rougheye rockfish specified for the Aleutian Islands subarea is allocated 30 percent to vessels using non-trawl gear and 70 percent to vessels using trawl gear. Based on a proposed 2004 ITAC of 706 mt, the trawl allocation is 494 mt and the non-trawl allocation is 212 mt.

Sablefish Gear Allocation

Regulations at § 679.20(a)(4)(iii) and (iv) require that sablefish TACs for the Bering Sea and Aleutian Islands subareas be allocated between trawl and hook-and-line or pot gear. Gear allocations of the TACs for the Bering Sea subarea are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear and for the Aleutian Islands subarea are 25 percent for trawl gear and 75 percent for hook-and-line or pot gear. Regulations at § 679.20(b)(1)(iii)(B) require that 20 percent of the hook-and-line and pot gear allocation of sablefish be apportioned to the CDQ reserve. Additionally, regulations at § 679.20(b)(1)(iii)(A) require that 7.5 percent of the trawl gear allocation of sablefish (one half of the reserve) be apportioned to the CDQ reserve. Proposed 2004 gear allocations of the sablefish TAC and CDQ reserve amounts are specified in Table 5.

TABLE 5.—PROPOSED 2004 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

Subarea and gear	Percent of TAC	Share of TAC (mt)	ITAC (mt) [1]	CDQ reserve
Bering Sea:				
Trawl [2]	50	1,329	1,130	100
Hook-and-line/pot gear [3]	50	1,329	N/A	266
Total	100	2,658	1,130	365
Aleutian Islands:				
Trawl [2]	25	711	604	53
Hook-and-line/pot gear [3]	75	2,132	N/A	426
Total	100	2,842	604	480

[1] Except for the sablefish hook-and-line or pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

[2] For the portion of the sablefish TAC allocated to vessels using trawl gear, one half of the reserve (7.5 percent of the specified TAC) is reserved for the CDQ program.

[3] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Regulations in § 679.20(b)(1) do not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Allocation of Prohibited Species Catch Limits for Halibut, Crab, Salmon, and Herring

Due to the lack of new information concerning PSC limits and apportionments in October 2003, the Council recommended using the halibut, crab, and herring 2003 PSC amounts for the proposed 2004 amounts. The Council will reconsider these amounts in December 2003, based on recommendations by the Plan Team and the SSC. Regulations at § 679.21(e)(1)(vii) specify a scheduled reduction of chinook salmon PSC limits until the final limit is reached in 2004. For 2004, the proposed chinook salmon PSC limit for the pollock fishery is 29,000 fish. Regulations at § 679.21(e)(1)(i) allocate 7.5 percent or 2,175 chinook salmon as the proposed PSQ for the CDQ program and the remaining 26,825 chinook salmon to the non-CDQ fisheries.

PSC limits for halibut are set in regulations at § 679.21(e). For the BSAI trawl fisheries, the limit is 3,675 mt of Pacific halibut mortality and for non-trawl fisheries, the limit is 900 mt of mortality. PSC limits for crab and herring are specified annually based on abundance and spawning biomass.

The red king crab mature female abundance is estimated from the 2002 survey data to be 18.6 million king crab and the effective spawning biomass is estimated to be 37.7 million pounds (17,100 mt). Based on the criteria set out at § 679.21(e)(1)(ii), the proposed 2003 PSC limit of red king crab in Zone 1 for trawl gear is 97,000 animals as a result of the mature female abundance being above 8.4 million king crab, and the effective spawning biomass estimate being greater than 14.5 (6,577 mt), but less than 55 million pounds (24,948 mt).

Regulations at § 679.21(e)(3)(ii)(B) establish criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations limit the RKCSS red king crab bycatch limit to up to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/''other flatfish'' fishery category. The limit must be based on the need to optimize the groundfish harvest relative to red king crab bycatch. The Council recommended, and NMFS approves, a proposed red king crab bycatch limit equal to 35 percent of the trawl bycatch allowance specified for the rock sole/ flathead sole/ ''other flatfish'' fishery category within the RKCSS.

Based on 2002 survey data, the *Chionoecetes bairdi* crab abundance is estimated to be 464.9 million animals. Given the criteria set out at § 679.21(e)(1)(iii), the proposed 2004 *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1 and 2,970,000 animals in Zone 2 as a result of the *C. bairdi* crab abundance estimate of over 400 million animals.

Under § 679.21(e)(1)(iv), the PSC limit for *C. opilio* crab is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit is set at 0.1133 percent of the Bering Sea abundance index. Based on the 2002 survey estimate of 1.49 billion animals, the calculated limit is 1,169,000 animals. Because this limit is less than 4.5 million, under § 679.21(e)(1)(iv)(B), the proposed 2004 *C. opilio* crab PSC limit is 4,350,000 million animals.

Under § 679.21(e)(1)(vi), the proposed PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. NMFS's best estimate of 2003 herring biomass is 152,574 mt. This amount was derived using 2002 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game (ADF&G). Therefore, the proposed herring PSC limit for 2004 is 1,526 mt.

Under § 679.21(e)(1)(i), 7.5 percent of each PSC limit specified for crab and halibut is reserved as a PSQ reserve for use by the groundfish CDQ program. Regulations at § 679.21(e)(3) require the apportionment of each trawl PSC limit into PSC bycatch allowances for seven specified fishery categories.

Regulations at § 679.21(e)(4)(ii) authorize the apportionment of the non-trawl halibut PSC limit among five fishery categories. The proposed fishery bycatch allowances for the trawl and non-trawl fisheries are listed in Table 6.

Regulations at § 679.21(e)(4)(ii) authorize exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, NMFS after consultation with the Council, is proposing to exempt pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions because these fisheries use selective gear types that take comparatively few halibut. In 2003, total groundfish catch for the pot gear fishery in the BSAI was approximately 17,929 mt with an associated halibut bycatch mortality of about 3 mt. The 2003 groundfish jig gear fishery harvested about 156 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, a negligible amount of halibut bycatch mortality is assumed because of the selective nature of this gear type and the likelihood that halibut caught with jig gear have a high survival rate when released.

As in past years, the Council recommended that the sablefish IFQ fishery be exempt from halibut bycatch restrictions because of the halibut retention requirements of the sablefish and halibut IFQ program (subpart D of 50 CFR part 679). The IFQ program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ. This provision results in reduced halibut discard in the sablefish fishery. In 1995, about 36 mt of halibut discard mortality was estimated for the sablefish IFQ fishery. A similar estimate for 1996 through 2003 has not been calculated, but NMFS has no information indicating that it would be significantly different.

Regulations at § 679.21(e)(5) authorize NMFS, after consultation with the Council, to establish seasonal apportionments of PSC allowances. In October 2003, the Council proposed no seasonal apportionments, except for the trawl bycatch allowance for halibut bycatch specified for the rockfish trawl fishery. The intent of this proposal was to reduce halibut bycatch during the first quarter when halibut bycatch is the highest. NMFS anticipates that the Council will recommend additional seasonal apportionments during its December 2003 meeting.

TABLE 6.—PROPOSED 2004 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

Trawl fisheries	Prohibited species and zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red king crab (animals) Zone 1[1]	*C. opilio* (animals) COBLZ[2]	*C. bairdi* (animals)	
					Zone 1[1]	Zone 2[1]
Yellowfin sole	886	139	16,664	2,776,981	340,844	1,788,459
Rock sole/other flat/flathead sole[3]	779	20	59,782	969,130	365,320	596,154
Turbot/arrowtooth/sablefish[4]	.....	9	.....	40,238	.....	.....
Rockfish: July 4–December 31	69	7	.....	40,237	.....	10,988
Pacific cod	1,434	20	13,079	124,736	183,112	324,176
Midwater trawl pollock	.....	1,184	.....	.....	.....	.....
Pollock/Atka mackerel/other[5]	232	146	200	72,428	17,224	27,473
Red King Crab Savings Subarea (non-pelagic trawl)	.....	.....	20,924	.....	.....	.....
Total Trawl PSC	3,400	1,526	89,725	4,023,750	906,500	2,747,250
Non-Trawl Fisheries:						
Pacific cod—Total	775	.....	.....	.....	.....	.....
Other non-trawl—Total	58	.....	.....	.....	.....	.....
Groundfish pot & jig	exempt	.....	.....	.....	.....	.....
Sablefish hook-and-line	exempt	.....	.....	.....	.....	.....
Total Non-Trawl	833	.....	.....	.....	.....	.....
PSQ Reserve[6]	342	.....	7,275	326,250	73,500	222,750
Grand Total	4,575	1,526	97,000	4,350,000	980,000	2,970,000

[1] Refer to § 679.2 for definitions of areas.
[2] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at 50 CFR part 679, Figure 13.
[3] ''Other flatfish'' for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), greenland turbot, rock sole, yellowfin sole and arrowtooth flounder.
[4] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[5] Pollock other than pelagic trawl pollock, Atka mackerel, and ''other species'' fishery category.
[6] With the exception of herring, 7.5 percent of each PSC limit is allocated to the CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.

To monitor halibut bycatch mortality allowances and apportionments, the Administrator, Alaska Region, NMFS (Regional Administrator), will use observed halibut bycatch rates, assumed discard mortality rates (DMR), and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The assumed DMRs are based on the best information available, including information contained in the annual SAFE report.

The Council recommended and NMFS proposes that the recommended halibut DMRs developed by staff of the International Pacific Halibut Commission (IPHC) for the 2003 BSAI groundfish fisheries be used for monitoring halibut bycatch allowances established for the 2004 groundfish fisheries (Table 7). Results from analysis of halibut release condition data for 2000 showed continued stability in halibut DMRs for many fisheries. Plots of annual DMRs against the 10-year mean indicated little change since 1990 for some fisheries, particularly the major trawl fisheries. DMRs were more variable for the smaller fisheries that typically take minor amounts of halibut bycatch. For 2003 for most groundfish fisheries, DMRs were used based on long-term mean for a 3-year period before revisions were proposed. Annual DMRs were used for the BSAI hook-and-line Pacific cod fishery and CDQ fisheries. The IPHC will analyze observer data annually and recommend changes to the DMRs where a fishery DMR shows large variation from the mean. For 2003, the BSAI hook-and-line Pacific cod fishery DMR did not change; but the CDQ fishery DMRs were adjusted. The justification for these proposed DMRs is discussed in Appendix A of the final SAFE report dated November 2002. The proposed DMRs listed in Table 7 are subject to change pending the results of an updated analysis on halibut DMRs in the groundfish fisheries that IPHC staff is scheduled to present to the Council at its December 2003 meeting.

TABLE 7.—PROPOSED 2004 ASSUMED PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI FISHERIES

Fishery	Pre-season assumed mortality (percent)
Hook-and-line gear fisheries:	
Greenland turbot	18
Other Species	12
Pacific cod	12
Rockfish	25
Sablefish	22
Trawl gear fisheries:	
Atka mackerel	75
Flathead sole	67
Greenland turbot	70
Nonpelagic pollock	76
Pelagic pollock	84
Other flatfish	71
Other species	67
Pacific cod	67
Rockfish	69
Rock sole	76
Sablefish	50
Yellowfin sole	81
Pot gear fisheries:	
Other species	8
Pacific cod	8

TABLE 7.—PROPOSED 2004 ASSUMED PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI FISHERIES—Continued

Fishery	Pre-season assumed mortality (percent)
CDQ trawl fisheries:	
Atka mackerel	80
Flathead sole	90
Nonpelagic pollock	90
Pelagic pollock	89
Rockfish	90
Yellowfin sole	83
CDQ hook-and-line fisheries:	
Greenland turbot	4
Pacific cod	11

TABLE 7.—PROPOSED 2004 ASSUMED PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI FISHERIES—Continued

Fishery	Pre-season assumed mortality (percent)
CDQ pot fisheries:	
Pacific cod	2
Sablefish	46

Bering Sea Subarea Inshore Pollock Allocations

Regulations at § 679.4 set forth procedures for AFA inshore catcher vessel pollock cooperatives to apply for and receive cooperative fishing permits and inshore pollock allocations. For 2003, NMFS received applications from seven inshore catcher vessel cooperatives. Applications for 2004 must be received by the Regional Administrator by December 1, 2003. Table 8 lists the proposed pollock allocations to the seven inshore catcher vessel pollock cooperatives based on 2003 cooperative allocations and the assumption that the cooperatives' membership will remain unchanged in 2004. Allocations for cooperatives and vessels not participating in cooperatives are not made for the AI subarea because the AI subarea has been closed to directed fishing for pollock. These allocations may be revised pending adjustments to cooperatives' membership prior to 2004.

TABLE 8.—PROPOSED 2004 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

Cooperative name and member vessels	Sum of member vessel's official catch histories [1] (mt)	Percentage of inshore sector allocation	Annual co-op allocation (mt)
Akutan Catcher Vessel Association: ALDEBARAN, ARCTIC EXPLORER, ARCTURUS, BLUE FOX, CAPE KIWANDA, COLUMBIA, DOMINATOR, EXODUS, FLYING CLOUD, GOLDEN DAWN, GOLDEN PISCES, HAZEL LORRAINE, INTREPID EXPLORER, LESLIE LEE, LISA MELINDA, MAJESTY, MARCY J, MARGARET LYN, NORDIC EXPLORER, NORTHERN PATRIOT, NORTHWEST EXPLORER, PACIFIC RAM, PACIFIC VIKING, PEGASUS, PEGGY JO, PERSEVERANCE, PREDATOR, RAVEN, ROYAL AMERICAN, SEEKER, SOVEREIGNTY, TRAVELER, VIKING EXPLORER	245,527	28.085	181,932
Arctic Enterprise Association: BRISTOL EXPLORER, OCEAN EXPLORER, PACIFIC EXPLORER	36,807	4.210	27,273
Northern Victor Fleet Cooperative: ANITA J, COLLIER BROTHERS, COMMODORE, EXCALIBUR II, GOLDRUSH, HALF MOON BAY, MISS BERDIE, NORDIC FURY, PACIFIC FURY, POSEIDON, ROYAL ATLANTIC, SUNSET BAY, STORM PETREL	73,656	8.425	54,578
Peter Pan Fleet Cooperative: AMBER DAWN, AMERICAN BEAUTY, ELIZABETH F, MORNING STAR, OCEAN LEADER, OCEANIC, PROVIDIAN, TOPAZ, WALTER N	18,693	2.138	13,851
Unalaska Cooperative: ALASKA ROSE, BERING ROSE, DESTINATION, GREAT PACIFIC, MESSIAH, MORNING STAR, MS AMY, PROGRESS, SEA WOLF, VANGUARD, WESTERN DAWN	106,737	12.209	79,091
UniSea Fleet Cooperative: ALSEA, AMERICAN EAGLE, ARGOSY, AURIGA, AURORA, DEFENDER, GUN-MAR, NORDIC STAR, PACIFIC MONARCH, SEADAWN, STARFISH, STARLITE	201,566	23.056	149,357
Westward Fleet Cooperative: A.J., ALASKAN COMMAND, ALYESKA, ARCTIC WIND, CAITLIN ANN, CHELSEA K, DONA MARTITA, FIERCE ALLEGIANCE, HICKORY WIND, OCEAN HOPE 3, PACIFIC CHALLENGER, PACIFIC KNIGHT, PACIFIC PRINCE, STARWARD, VIKING, WESTWARD I	189,942	21.727	140,744
Open access AFA vessels	1,309	0.150	970
Total inshore allocation	874,238	100	647,797

[1] According to regulations at § 679.62(e)(1), the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

Under regulations at § 679.20(a)(5)(i)(A), NMFS subdivides the inshore allocation into allocations for cooperatives and vessels not fishing in a cooperative. In addition, under § 679.22(a)(7)(vii), NMFS establishes harvest limits inside the Steller sea lion conservation area (SCA) and provides a set-aside so that catcher vessels less than or equal to 99 ft (30.2 m) LOA have the opportunity to operate entirely within the SCA during the A season. Accordingly, Table 9 lists the proposed apportionment of the Bering Sea subarea inshore pollock allocation into allocations for vessels fishing in a cooperative and for vessels not participating in a cooperative and establishes a cooperative-sector SCA set-aside for AFA catcher vessels less than or equal to 99 ft (30.2 m) LOA. The SCA set-aside for catcher vessels less than or equal to 99 ft (30.2 m) LOA that are not participating in a cooperative will be established inseason based on actual participation levels and is not included in Table 9. These proposed allocations may be revised pending final review and approval of 2004 cooperative agreements.

TABLE 9.—PROPOSED 2004 BERING SEA SUBAREA POLLOCK ALLOCATIONS TO THE COOPERATIVE AND NON-COOPERATIVE SECTORS OF THE INSHORE POLLOCK FISHERY

[All amounts are in metric tons]

	A season TAC	A season inside SCA [1]	B season TAC
Cooperative sector:			
Vessels > 99 ft	n/a	155,616	n/a
Vessels ≤ 99 ft	n/a	25,495	n/a
Total	258,731	181,111	388,096
Open access sector	388	[2] 272	582
Total inshore	259,119	181,383	388,678

[1] The Steller sea lion conservation area established at § 679.22(a)(7)(vii).

[2] SCA limitations for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(7)(vii)(C)(*2*) which specifies that ''the Regional Administrator will prohibit directed fishing for pollock by vessels catching pollock for processing by the inshore component greater than 99 ft (30.2 m) LOA before reaching the inshore SCA harvest limit during the A season to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA for the duration of the inshore seasonal opening.''

Listed AFA Catcher/Processor Sideboard Limits

Under regulations at § 679.64(a), the Regional Administrator will restrict the ability of listed AFA catcher/processors to engage in directed fishing for non-pollock groundfish species to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. The catcher/processor sideboard limits for BSAI groundfish, other than Atka mackerel, Pacific cod and Pacific ocean perch, will be based on the 1995 through 1997 retained catch of such groundfish species by the 20 listed AFA catcher/processors listed in paragraphs (e)(1) through (e)(20) of section 208 of the AFA and the nine ineligible catcher/processors listed in section 209 of the AFA. Pacific cod catcher/processor sideboard limits will be based on 1997 retained catch only, and Pacific ocean perch in the Aleutian Islands subarea will be based on 1996 and 1997 retained catch only. The AFA catcher/processor sideboard limit for Atka mackerel is zero percent of the Bering Sea subarea and Eastern Aleutians District's annual TAC, 11.5 percent of the Central Aleutian District's annual TAC, and 20 percent of the Western Aleutian District's annual TAC. The proposed 2004 catcher/processor sideboard limits are set out in Table 10 below.

All non-pollock groundfish that is harvested by listed AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from the proposed sideboard limits in Table 10. However, non-pollock groundfish that is delivered to listed catcher/processors by catcher vessels will not be deducted from the proposed 2004 sideboard limits for the listed catcher/processors.

TABLE 10.—PROPOSED 2004 LISTED BSAI AMERICAN FISHERIES ACT CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS

Target species/area	1995–1997			Proposed 2004 ITAC available to trawl C/Ps (mt)	Proposed 2004 C/P sideboard limit (mt)
	Retained catch (mt)	Available TAC (mt)	Ratio of Retained catch/Available TAC		
Pacific cod trawl: BSAI	12,424	51,450	0.241	45,105	10,870
Sablefish trawl:					
BS	8	1,736	0.005	1,130	6
AI	0	1,135	0.000	603	0
Atka mackerel:					
Western AI:					
A season [1] HLA limit [2].	n/a	n/a	0.200	8,496	1,699
B season HLA limit.	n/a	n/a	0.200	8,496	1,699
Central AI:					
A season [1] HLA limit.	n/a	n/a	0.115	12,201	1,403
B season HLA limit.	n/a	n/a	0.115	12,201	1,403
Yellowfin sole: BSAI	100,192	527,000	0.190	71,188	13,526
Rock sole: BSAI	6,317	202,107	0.031	37,400	1,159
Greenland turbot:					
BS	121	16,911	0.007	2,278	16
AI	23	6,839	0.003	1,122	3
Arrowtooth flounder: BSAI	76	36,873	0.002	10,200	20
Flathead sole: BSAI	1,925	87,975	0.022	17,000	374
Alaska plaice: BSAI	3,243	.....	0.035	9,250	324
Other flatfish: BSAI	3,243	92,428	0.035	2,775	97

TABLE 10.—PROPOSED 2004 LISTED BSAI AMERICAN FISHERIES ACT CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS—Continued

Target species/area	1995–1997			Proposed 2004 ITAC available to trawl C/Ps (mt)	Proposed 2004 C/P sideboard limit (mt)
	Retained catch (mt)	Available TAC (mt)	Ratio of Retained catch/Available TAC		
Pacific ocean perch:					
BS	12	5,760	0.002	1,199	2
Western AI	54	12,440	0.004	4,907	20
Central AI	3	6,195	0.000	2,802	0
Eastern AI	125	6,265	0.020	2,936	59
Northern rockfish:					
BS	8	.....	0.008	112	1
AI	83	13,254	0.006	5,438	33
Shortraker/rougheye:					
BS	8	.....	0.008	126	1
AI	42	2,827	0.015	538	8
Other rockfish:					
BS	18	1,026	0.018	888	16
AI	22	1,924	0.011	539	6
Squid: BSAI	73	3,670	0.020	1,675	34
Other species: BSAI	553	65,925	0.008	29,886	239

[1] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the available TAC in the Western Aleutian District, and 11.5 percent of the available TAC in the Central Aleutian District.

[2] Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2004, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.

Regulations at § 679.64(a) establish a formula for PSC sideboard limits for listed AFA catcher/processors. These amounts are equivalent to the percentage of PSC limits harvested in the non-pollock groundfish fisheries by the AFA catcher/processors listed in subsection 208(e) and section 209 of the AFA from 1995 through 1997. PSC amounts harvested by these catcher/processors in BSAI non-pollock groundfish fisheries from 1995 through 1997 are shown in Table 10. These data were used to calculate the PSC catch ratios for pollock catcher/processors shown in Table 10. The 2004 PSC limits available to trawl catcher/processors are multiplied by the ratios to determine the PSC sideboard limits for listed AFA catcher/processors in the 2004 non-pollock groundfish fisheries.

PSC that is caught by listed AFA catcher/processors participating in any non-pollock groundfish fishery listed in Table 11 would accrue against the proposed 2004 PSC limits for the listed catcher/processors. Regulations at § 679.21(e)(3)(v) provide NMFS with the authority to close directed fishing for non-pollock groundfish for listed AFA catcher/processors once a proposed 2004 PSC limitation listed in Table 11 is reached.

Crab or halibut PSC that is caught by listed AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/other species fishery categories under regulations at § 679.21(e).

TABLE 11.—PROPOSED 2004 BSAI AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD LIMITS[1]

PSC species	1995–1997			Proposed 2004 PSC available to trawl vessels	Proposed 2004 C/P limit
	PSC catch	Total PSC	Ratio of PSC catch/total PSC		
Halibut mortality	955	11,325	0.084	3,400	286
Red king crab	3,098	473,750	0.007	89,725	628
C. opilio	2,323,731	15,139,178	0.153	4,023,750	615,634
C. bairdi:					
Zone 1	385,978	2,750,000	0.140	906,500	126,910
Zone 2	406,860	8,100,000	0.050	2,747,250	137,363

[1] Halibut amounts are in mt of halibut mortality. Crab amounts are in numbers of animals.

AFA Catcher Vessel Sideboard Limits

Regulations at § 679.64(b) establish formulas for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The catcher vessel sideboard limits for BSAI groundfish will be based on the 1995 through 1997 retained catch of such groundfish species by all AFA catcher vessels, except for Pacific cod which will be based on 1997 retained catch by non-exempt AFA catcher vessels only. The proposed 2004 AFA catcher vessel sideboard limits are shown in Tables 12 and 13.

All harvests of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or incidental catch, will be

deducted from the proposed sideboard limits listed in Table 12.

TABLE 12.—PROPOSED 2004 BSAI AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD LIMITS

Species and fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	Proposed 2004 initial TAC (mt)	Proposed 2004 catcher vessel sideboard limits (mt)
Pacific cod:			
BSAI:			
Jig gear	0.0000	3,528	0
Hook-and-line CV:	.....	.....	0
Jan 1–Jun 10	0.0006	161	0
Jun 10–Dec 31	0.0006	107	0
Pot gear:	.....	.....	0
Jan 1—Jun 10	0.0006	9,822	6
Sept 1–Dec 31	0.0006	6,548	4
CV <60 feet LOA using hook-and-line or pot gear	0.0006	1,252	1
Trawl gear catcher vessel:	.....	.....	0
Jan 20–Apr 1	0.8609	29,014	24,978
Apr 1–Jun 10	0.8609	4,145	3,193
Jun 10–Nov 1	0.8609	8,290	6,386
Sablefish:			
BS trawl gear	0.0906	1,131	102
AI trawl gear	0.0645	603	39
Atka mackerel:			
Eastern AI/BS:	.....	.....	0
Jig gear	0.0031	89	0
Other gear:	.....	.....	0
Jan 1–Apr 15	0.0032	4,381	14
Sept 1–Nov 1	0.0032	4,381	14
Central AI:	.....	.....	0
Jan–Apr 15	0.0001	12,201	1
HLA limit	0.0001	7,321	1
Sept 1–Nov 1	0.0001	12,201	1
HLA limit	0.0001	7,321	1
Western AI:	.....	.....	0
Jan–Apr 15	0	8,496	0
HLA limit	0.0000	5,097	0
Sept 1–Nov 1	0	8,496	0
HLA limit	0	5,097	0
Yellowfin sole: BSAI	0.0647	71,188	4,606
Rock sole: BSAI	0.0341	37,400	1,275
Greenland Turbot:			
BS	0.0645	2,278	147
AI	0.0205	1,122	23
Arrowtooth flounder: BSAI	0.0690	10,200	704
Alaska plaice: BSAI	0.0441	8,500	375
Other flatfish: BSAI	0.0441	2,550	112
Pacific ocean perch:			
BS	0.1000	1,199	120
Eastern AI	0.0077	2,936	23
Central AI	0.0025	2,802	7
Western AI	0.0000	4,907	0
Northern rockfish:			
BS	0.0280	103	3
AI	0.0089	4,997	44
Shortraker/Rougheye:			
BS	0.0048	116	1
AI	0.0035	706	2
Other rockfish:			
BS	0.0048	816	4
AI	0.0095	539	5
Squid: BSAI	0.3827	1,675	641
Other species: BSAI	0.0541	27,463	1,486
Flathead Sole: BS trawl gear	0.0505	17,000	859

Regulations at § 679.64(b) establish a formula for PSC sideboard limits for AFA catcher vessels. The AFA catcher vessel PSC bycatch limits will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all

vessels in that fishery from 1995 through 1997. These proposed PSC sideboard limits are listed in Table 13.

Halibut and crab PSC that is caught by AFA catcher vessels participating in any non-pollock groundfish fishery listed in Table 13 will accrue against the proposed 2004 PSC limits for the AFA catcher vessels. Regulations at § 679.21(e)(3)(v) provide authority to close directed fishing for non-pollock groundfish for AFA catcher vessels once a proposed 2004 PSC limit listed in Table 13 is reached. PSC that is caught by AFA catcher vessels while fishing for pollock in the BSAI will accrue against either the midwater pollock or the pollock/Atka mackerel/other species fishery categories.

TABLE 13.—PROPOSED 2004 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI [1]

PSC species and target fishery category [2]	Ratio of 1995–1997 AFA CV retained catch to total retained catch	Proposed 2004 PSC limit	Proposed 2004 AFA catcher vessel PSC sideboard limit
Halibut:			
Pacific cod trawl	0.6183	1,434	887
Pacific cod hook-and-line or pot	0.0022	775	2
Yellowfin sole	0.1144	886	101
Rock sole/flat. sole/other flatfish [5]	0.2841	779	221
Turbot/Arrowtooth/Sablefish	0.2327	0	.....
Rockfish	0.0245	69	2
Pollock/Atka mackerel/Other sp.	0.0227	232	5
Red King Crab, Zone 1 [4]:			
Pacific cod	0.6183	13,079	8,087
Yellowfin sole	0.1144	16,664	1,906
Rock sole/flat. sole/other flatfish [5]	0.2841	59,782	16,984
Pollock/Atka mackerel/Other sp.	0.0227	200	5
C. opilio, COBLZ [3]:			
Pacific cod	0.6183	124,736	77,124
Yellowfin sole	0.1144	2,776,981	317,687
Rock sole/flat. sole/other flatfish [5]	0.2841	969,130	275,330
Pollock/Atka mackerel/Other sp.	0.0227	72,428	1,644
Rockfish	0.0245	40,237	986
Turbot/Arrowtooth/Sablefish	0.2327	40,238	9,363
C. bairdi, Zone [1]:			
Pacific cod	0.6183	183,112	113,218
Yellowfin sole	0.1144	340,844	38,993
Rock sole/flat. sole/other flatfish [5]	0.2841	365,320	103,787
Pollock/Atka mackerel/Other sp.	0.0227	17,224	391
C. bairdi, Zone [2]:			
Pacific cod	0.6183	324,176	200,438
Yellowfin sole	0.1144	1,788,459	204,600
Rock sole/flat. sole/other flatfish [5]	0.2841	596,154	169,367
Pollock/Atka mackerel/Other sp.	0.0227	27,473	624
Rockfish	0.0245	10,988	269

[1] Halibut amounts are in mt of halibut mortality. Crab amounts are in numbers of animals.
[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).
[3] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at Figure 13 of 50 CFR part 679.
[4] In October 2003, the Council recommended that red king crab bycatch for trawl fisheries within the RKCSS be limited to 35 percent of the total allocation to the rock sole/flathead sole/''other flatfish'' fishery category (see § 679.21(e)(3)(ii)(B)).
[5] ''Other flatfish'' for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared an IRFA for this action in accordance with the provisions of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 603(b)). A copy of this analysis is available from the Council (see **ADDRESSES**). This IRFA evaluates the effects of the proposed action on regulated small entities. The reasons for the action, a statement of the objectives of the action, and the legal basis for the proposed rule, are discussed earlier in the preamble.

The small entities affected by this action are those that commercially harvest groundfish under the BSAI FMP. Data in the IRFA indicates that about 220 catcher vessels, and about 40 catcher-processors, and six CDQ groups may be ''small entities'' under the terms of the RFA.

Using the sectoral first wholesale gross revenue changes as an index, the preferred alternative seems to have adverse impacts in the sablefish sectors in the BSAI. There do not appear to be other adverse impacts associated with the preferred alternative. The model suggests that there will be revenue reductions for rockfish, Atka mackerel, and other species. However, the projected revenue reductions for these species appear to be relatively small percentages of the prior year (2003) gross revenue estimates. Given the large confidence intervals believed to be associated with these estimates, these are thought to be minor impacts.

Harvest records indicate that in 2001, 87 vessels harvested sablefish in the BSAI in excess of the minimum harvest threshold adopted to select vessels for the analysis. Of these, 69 were small

entities according to the $3.5 million in gross revenues criterion used by the SBA for catcher vessels. These small vessels harvested about 1,449 mt of sablefish in all their sablefish fisheries (some of this tonnage may have come from operations in the GOA). Another 71 vessels harvested amounts of sablefish below the minimum harvest threshold; these vessels only harvested a total of about 12 mt of sablefish. The 69 small vessels above the threshold averaged about $1.1 million in all their fisheries (groundfish, crab, scallops, salmon and herring) in Alaska, and about $229,000 from all their sablefish in Alaska. If the small entity revenue reduction is proportionate to the overall first wholesale ''index'' reduction in the area, and if the small entities catch all of their sablefish in the BSAI, the small entity revenue reduction would be about $19,000. This would be about 8.3 percent of their sablefish revenues, and about 1.7 percent of their overall revenues.

The CDQ program provides a mechanism to allow local communities to benefit from the BSAI fisheries. Sixty-five regional communities have banded together into six Community Development Quota (CDQ) groups. Regulations require the allocation of proportions of the annual species specifications to the CDQ groups. The CDQ groups may fish the allocations themselves, enter into joint ventures to fish them, or lease them out to fishing firms. These allocations generate large revenues for the CDQ groups. In 2001, the CDQ groups as a whole earned about $43 million in royalties from the program; in 2002, they earned about $46 million. Because the CDQ groups are non-profit organizations, they are treated as small entities for RFA purposes.

The sablefish first wholesale gross revenues from CDQ program allocations will decline by about 8% under the preferred alternative. This comparatively large percentage decline is associated with a relatively small decline in first wholesale value of about $137,000. This decline in first wholesale value would be associated with a smaller decline in CDQ program royalties. Even if royalties were equal to first wholesale revenues, which they are not, this decline would be a small fraction of a percent of total CDQ program royalties.

The preferred alternative was compared to the four other alternatives evaluated during the specifications process. These alternatives are defined by TACs set so as to generate different harvest rates (F values). Alternative 1 sets a TAC to generate the harvest rate associated with the maximum ABC for each species, Alternative 2 is the preferred alternative, Alternative 3 sets TACs to produce fishing rates that are half those of Alternative 1, Alternative 4 sets TACs to generate fishing rates equal to the most recent five year average rates, and Alternative 5 sets TACs equal to zero. Only Alternative 1 had a smaller adverse impact on small entities than the preferred alternative. However Alternative 1 would have increased sablefish harvests and would have failed to meet the objective of protecting the long run health of the sablefish stocks. Also, Alternative 1 would have authorized groundfish harvests in excess of the 2 million optimal yield cap for the BSAI.

The action does not impose new recordkeeping or reporting requirements on small entities. The analysis did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

Authority: 16 U.S.C. 773 *et seq.* 16 U.S.C. 1801 *et seq.*, and 3631 *et seq.*

Dated: November 26, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs.

[FR Doc. 03–30134 Filed 12–2–03; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 68, No. 232
Wednesday, December 3, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Senior Executive Service: Membership of Performance Review Board

ACTION: Notice.

SUMMARY: The following persons are members of the Performance Review Board for 2003.

Members: Arnold J. Haiman, Chair, Drew W. Luten, SES Member, James E. Painter, SES Member, Jessalyn L. Pendarvis, SES Member, Adrienne R. Rish, SES Member.

FOR FURTHER INFORMATION CONTACT: Dan Stoll, 202–712–1076.

Dated: November 21, 2003.

Irma Marshall,

Human Resource Specialist.

[FR Doc. 03–29620 Filed 12–2–03; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by the Olive Growers Council (Council) of California, Visalia, California, for trade adjustment assistance. The petitioner represents producers of olives in California. The Council has requested a public hearing to review the merits of the petition, which will be held in Room 5066–S, South Agricultural Building, Washington, DC, on December 10, 2003, at 11 A.M. ET.

SUPPLEMENTARY INFORMATION: The petition maintains that during August 1, 2001, through July 31, 2002, increasing imports of olives in a saline solution contributed importantly to a decline in domestic producer prices by more than 20 percent. To support their contention, the Council submitted price data from the National Agricultural Statistics Service. Having accepted this petition, the Administrator has 40 days to determine whether or not producers represented by the Council are eligible for trade adjustment assistance. If the determination is positive, they 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, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: November 14, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–29399 Filed 12–2–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD OCTOBER 28, 2003—NOVEMBER 21, 2003

Firm name	Address	Date petition accepted	Product
Louis Baldinger & Sons, Inc	19–02 Steinway Street, Astoria, NY 11105.	11/03/03	Custom design lighting fixtures.
Atlas Industries, Inc	1750 E. State Street, Fremont, OH 43420.	11/07/03	Precision machined parts—crankshafts, manifolds, drive shafts, valve bridges, refrigeration and air conditioning plates and covers.
Reynolds & Reynolds Electronics, Inc	521 E. Fourth Street, Bethlehem, PA 18015.	11/04/04	Electronic emergency energy equipment for elevators.
Mullen Industries, Inc	425 St. Clair Industrial Dr., St. Clair, MO 63077.	11/14/03	Safety Valves and controls.
R & D Manufacturing, Inc	160 S.W. Freeman Ave., Hillsboro, OR 97123.	11/18/03	Threaded and non-threaded fasteners for hand tools, exercise equipment and belt loops.
Kelley Manufacturing, Inc	369 Route 519, Eighty Four, PA 15330	11/17/03	Molds for the glass industry.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request

a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: November 20, 2003.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 03–30067 Filed 12–2–03; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 61–2003]

Foreign-Trade Zone 77—Memphis, TN, Expansion of Manufacturing Authority—Subzone 77A, Sharp Manufacturing Company of America, (Consumer and Business Electronics) Shelby County, TN; Correction

The **Federal Register** notice (68 FR 65246–65247, 11/19/2003) describing the application by the City of Memphis, Tennessee, grantee of FTZ 77, requesting to expand the scope of manufacturing authority under zone procedures within Subzone 77A, at the Sharp Manufacturing Company of America facilities in Shelby County, Tennessee, is corrected as follows:

Paragraph 7 should read, ''Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 4, 2004).''

Dated: November 26, 2003.

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. 03–30126 Filed 12–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Application for NATO International Competitive Bidding

ACTION: Pre-submission notice; request for comments.

SUMMARY: The Department of Commerce, 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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 2, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Office of the Chief Information Officer, 202–482–0266, Room 6625, 14th and Constitution Avenue, NW., Washington DC 20230 or via the Internet at *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Dove, BIS ICB Liaison, Department of Commerce, BIS Office of the Chief Information Officer, Room 6622, 14th and Constitution Avenue, NW., Washington DC 20230.

SUPPLEMENTARY INFORMATION

I. Abstract

Opportunities to bid for contracts under the NATO Security Investment Program (NSIP) are only open to firms of member NATO countries. NSIP procedures for international competitive bidding (AC/4–D/2261) require that each NATO country certify that their respective firms are eligible to bid such contracts. This is done through the issuance of a ''Declaration of Eligibility.'' The U.S. Department of Commerce, Bureau of Industry of Security is the executive agency responsible for certifying U.S. firms. ITA–4023P and BIS–4023P are the application forms used to collect information needed to ascertain the eligibility of a U.S. firm. BIS will review applications for completeness and accuracy and determine a company's eligibility based on its financial viability, technical capability, and security clearances with the Department of Defense.

II. Method of Collection

The U.S. Department of Commerce distributes Form ITA–4023P (and revised form BIS–4023P) to potential applicants upon request. The applicant completes the form and forwards it to the U.S. Department of Commerce/ Bureau of Industry and Security for processing.

III. Data

OMB Number: None.

Form Number: ITA–4023P, BIS–4023P.

Type of Review: Regular Submission.

Affected Public: Businesses and other for-profit institutions, small businesses or organizations.

Estimated Number of Respondents: 40.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 40 hours.

Estimated Total Cost: $1,000.

Estimated Total Annual Cost: No start-up costs or capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: November 26, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30049 Filed 12–2–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–817]

Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate Products From Germany: Initiation of Countervailing Duty Changed Circumstances Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of countervailing duty changed circumstances reviews.

SUMMARY: In response to the October 22, 2003, request by International Steel Group, Inc. (purchaser of Bethlehem Steel Corporation) and United States Corporation, the domestic producers in these cases, the Department of

Commerce (the Department) is initiating changed circumstances countervailing duty reviews of the countervailing duty orders on certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products from Germany. The domestic producers have expressed no further interest in the relief provided by the countervailing duty orders. Interested parties are invited to comment on this notice of initiation.

EFFECTIVE DATE: December 3, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2209.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1993, the Department published countervailing duty orders on certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products from Germany. *See Countervailing Duty Orders and Amendment to Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Germany,* 58 FR 43756 (August 17, 1993). On October 22, 2003, International Steel Group, Inc. (purchaser of Bethlehem Steel Corporation) and United States Corporation, requested that the Department revoke the countervailing duty orders, effective April 1, 2004, based on their lack of further interest.

Scope of the Orders

The products covered by these reviews are certain corrosion-resistant carbon steel flat products and cut-to-length steel plate products from Germany.

(1) *Certain corrosion-resistant carbon steel flat products:* The scope of countervailing duty order of certain corrosion-resistant carbon steel flat products (corrosion-resistant) includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in this scope are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)—for example, products which have been beveled or rounded at the edges. Excluded from this scope are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin-free steel), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this scope are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this scope are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a ''20 percent–60 percent–20 percent'' ratio. On September 22, 1999, the Department issued the final results of a changed circumstances review and revoked the order with respect to certain corrosion-resistant steel. *See Notice of Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products From Germany,* 64 FR 51292 (September 22, 1999). The Department noted that the affirmative statement of no interest by petitioners, combined with the lack of comments from interested parties, is sufficient to warrant partial revocation. This partial revocation applies to certain corrosion-resistant deep-drawing carbon steel strip, roll-clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140. The merchandise's chemical composition encompasses a core material of U St 23 (continuous casting) in which carbon is less than 0.08 percent; manganese is less than 0.30 percent; phosphorous is less than 0.20 percent; sulfur is less than 0.015 percent; aluminum is less than 0.01 percent; and the cladding material is a minimum of 99 percent aluminum with silicon/copper/iron of less than 1 percent. The products are in strips with thicknesses of 0.07mm to 4.0mm (inclusive) and widths of 5mm to 800mm (inclusive). The thickness ratio of aluminum on either side of steel may range from 3 percent/94 percent/3 percent to 10 percent/80 percent/10 percent.

(2) *Certain cut-to-length carbon steel plate products:* The scope of countervailing duty order on certain cut-to-length carbon steel plate products (cut-to-length steel) includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which

have been worked after rolling) for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. On August 25, 1999, the Department issued the final results of a changed-circumstances review revoking the order in part, with respect to certain carbon cut-to-length steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM and 355 EMZ, as amended by Sable Offshore Energy Project Specification XB MOO Y 15 0001, types 1 and 2. *See Certain Cut-to-Length Carbon Steel Plate from Finland, Germany, and United Kingdom: Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews, and Revocation of Orders in Part,* 64 FR 46343 (August 25, 1999).

The HTS item numbers are provided for convenience and custom purposes. The written description remains dispositive.

Initiation of Changed Circumstances Reviews

Pursuant to section 751(d)(1) of the Tariff Act of 1930, as amended (the Act) the Department may revoke a countervailing duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request containing information concerning changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances review under 19 CFR 351.216, and may revoke an order in whole or in part, if it determines that the producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order, in whole or in part. *See* section 782(h) of the Act and section 351.222g(1) of the Department's regulations. In the event that the Department concludes that expedited action is warranted, sections 351.221(c)(3)(ii) and 351.222(f)(2)(iv) of the regulations permit the Department to combine the notices of initiation and preliminary results.

The domestic producers state that they are producers of certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products but do not identify the percentages of production of the domestic like products they represent. At present, the Department has no information on the record that the other known domestic producers have no interest in maintaining the countervailing duty orders with respect to the subject merchandise imported from Germany. In particular, the Department does not have information on the record of these changed circumstances reviews indicating that the domestic producers requesting this review account for substantially all, or at least 85 percent, of the production of the domestic like products. *See Certain Tin Mill Products from Japan: Final Results of Changed Circumstances Review,* 66 FR 52109 (October 12, 2001); *see,* also, 19 CFR 351.208(c). Accordingly, we are not combining this initiation with a preliminary determination, pursuant to 19 CFR 351.221(c)(3)(ii). This notice of initiation will accord all interested party an opportunity to address this proposed revocation.

In accordance with sections 751(b) of the Act and 19 CFR 351.216, 351.221, and 351.222, based on an affirmative statement of no interest by the domestic parties in continuing the countervailing duty orders with respect to certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products from Germany, as described above, we are initiating these changed circumstances administrative reviews.

If, as a result of these reviews, we revoke the orders, we intend to instruct U.S. Customs and Border Protection (CBP) to end the suspension of liquidation of the subject merchandise on the effective date of the final notice of revocation, and to refund any estimated countervailing duties collected, for all unliquidated entries of such merchandise made on or after April 1, 2004. We will also instruct CBP to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated countervailing duties on the subject merchandise will continue until publication of the final results of these changed circumstances reviews.

Public Comment

Interested parties are invited to comment on the initiation of these changed circumstances reviews. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. All written comments may be submitted by interested parties not later than 14 days after the date of publication of this notice in accordance with 19 CFR 351.303, with the exception that only three (3) copies need to be served on the Department, and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances reviews, in accordance with 19 CFR 351.221(c)(3), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results.

This notice is in accordance with section 751(b)(1) of the Act (19 U.S.C. 1675(b)), and 19 CFR 351.216, 351.221, and 351.222.

Dated: November 26, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30125 Filed 12–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112403C]

Endangered Species; Permit No. 1429

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

ACTION: Scientific research permit modification.

SUMMARY: Notice is hereby given that a request for modification of scientific research permit no. 1429 submitted by the National Marine Fisheries Service, Southeast Fisheries Science Center (SEFSC) has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289, fax (301)713–0376;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Patrick Opay, (301)713–1401 or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the provisions of 50 CFR 222.306 of the regulations governing the taking, importing, and exporting of endangered and threatened fish and wildlife (50 CFR 222–226).

The modification extends the expiration date of the Permit from December 31, 2003, to December 31, 2004, for takes of green (*Chelonia mydas*), loggerhead (*Caretta caretta*), olive ridley (*Lepidochelys olivacea*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*) and Kemp's ridley (*Lepidochelys kempii*) sea turtles. The permit allows the SEFSC to conduct sea turtle bycatch reduction research in the pelagic longline fishery of the western north Atlantic Ocean. The purpose of the research is to develop and test methods to reduce bycatch that occurs incidental to commercial, pelagic longline fishing.

Issuance of this amendment, as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the threatened and endangered species which are the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 26, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–30138 Filed 12–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Practice Implementation Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Business Practice Implementation Board (DBB) met on Thursday, November 20, 2003, at the Pentagon, Washington, DC from 0815 until 0940. The mission of the DBB is to advise the Senior Executive Council (SEC) and the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board's Human Resources (Minority Representation in Senior DoD Ranks) and Acquisition (Fuel Hedging) task groups deliberated on their preliminary findings related to tasks assigned earlier this year.

DATES: Thursday, November 20, 2003, 0815 to 0940 hrs.

ADDRESSES: Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: The DBB may be contacted at: Defense Business Practice Implementation Board, 1100 Defense Pentagon, Room 2E314, Washington, DC 20301–1100, via E-mail at *DBB@osd.pentagon.mil,* or via phone at (703) 695–0499.

Dated: November 14, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–30033 Filed 12–2–03; 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 Quarantining Guidance for the Severe Acute Respiratory Syndrome (SARS) Epidemic will meet in open session January 14, 2004, from 0930–1200 and from 1300–1500. The Task Force will meet at SAIC, 4001 N. Fairfax Drive, Suite 500, Arlington, VA. The Task Force will review the impact quarantining may have on DoD planning and operations by preventing the flow of personnel and material to areas of concern, eroding relationships with host countries, and impacting our forces through anxieties about family members.

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 this meeting, the Defense Science Board Task Force will review and evaluate the Department's ability to provide information to integrate public health needs, on behalf of national security. Specifically, the Task Force will review: Existing doctrine and processes by which quarantine policy is generated; required cooperation with non-DoD agencies and non-US Government entities, including other countries; the capacity of local commanders to rapidly survey disease status, and establish need, ways and means for quarantine in relation to their assigned mission; methods, technologies and doctrine to allow safe transport of personnel through quarantined areas, and restriction of movement where needed; sample scenarios; coordination and allocation of DoD and non DoD resources to combat SARS; identification and tracking of individuals potentially exposed to SARS; and features of the SARS guidance which may be applicable to future infectious disease outbreaks.

FOR FURTHER INFORMATION CONTACT: CDR David Waugh, USN, Defense Science Board, 3140 Defense Pentagon, Room 3D865, Washington, DC 20301–3140, via e-mail at *david.waugh@osd.mil*, or via phone at (703) 695–4158.

SUPPLEMENTARY INFORMATION: Members of the public who wish to attend the meeting must contact CDR Waugh no later than January 5, 2004, for further information about admission as seating is limited. Additionally, those who wish to make oral comments or deliver written comments should also request to be scheduled, and submit a written text of the comments by January 5, 2004, to allow time for distribution to Task Force members prior to the meeting. Individual oral comments will be limited to five minutes, with the total oral comment period not exceeding 30 minutes.

Dated: November 21, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–30034 Filed 12–2–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–62–000]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Penalty Revenue Credit Report

November 25, 2003.

Take notice that on November 20, 2003, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing a refund report showing penalty revenues that will be refunded, with interest, to the Customers upon approval by the Commission.

MRT states that copies of its filing have been served upon all of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Intervention and Protest Date: December 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00426 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–054]

Columbia Gas Transmission Corporation; Notice of Refund Report

November 25, 2003.

Take notice that on November 20, 2003, Columbia Gas Transmission Corporation (Columbia Gas) tendered for filing a report on the flow-back to customers of funds received from insurance carriers for environmental costs attributable to Columbia Gas' Docket No. RP95–408 settlement period.

Columbia Gas states that it allocated such recoveries among customers based on terms of the Docket No. RP95–408 Phase II Settlement which states that customer allocations shall be based on customers' actual contributions to Remediation Program collections for the most recent February 1–January 31 period.

Columbia Gas states further that it provided a copy of the report to all customers who received a share of the environmental insurance recoveries and all state commissions whose jurisdiction includes the location of any such recipient.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: December 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00422 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–161–031]

Columbia Gas Transmission Corporation; Notice of Refund Report

November 25, 2003.

Take notice that on November 20, 2003, Columbia Gas Transmission Corporation (Columbia Gas) tendered for filing a report on the flow-back to customers of funds received from insurance carriers for environmental costs attributable to Columbia Gas' Docket No. RP91–161 settlement period.

Columbia Gas states that it allocated such recoveries among customers based on their fixed cost responsibility for services on the Columbia Gas system during the period December 1, 1991 through January 31, 1996, the period of the Docket No. RP91–161 settlement.

Columbia Gas states further that it provided a copy of the report to all customers who received a share of the environmental insurance recoveries and all state commissions whose jurisdiction includes the location of any such recipient.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: December 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00428 Filed 12–02–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–160–031]

Columbia Gulf Transmission Company; Notice of Refund Report

November 25, 2003.

Take notice that on November 20, 2003, Columbia Gulf Transmission Company (Columbia Gulf) filed to report on the flow-back to customers of funds received from insurance carriers for environmental costs pursuant to Article I(A)(2)(d) of its Docket No. RP91–160 settlement.

Columbia Gulf states that it allocated such recoveries among customers based on their fixed cost responsibility for services rendered on the Columbia Gulf system during the period December 1, 1991 through October 31, 1994, the period of the Docket No. RP91–160 settlement.

Columbia Gulf states further that it provided a copy of the report to all customers who received a share of the environmental insurance recoveries and all state commissions whose jurisdiction

includes the location of any such recipient.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: December 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00427 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–336–023]

El Paso Natural Gas Company; Notice of Compliance Filing

November 26, 2003.

Take notice that on November 20, 2003, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, the following tariff sheets with an effective date of December 1, 2003:

First Revised Sheet No. 113E
Third Revised Sheet No. 119
Third Revised Sheet No. 120
Original Sheet No. 121
Reserved Sheet Nos. 122–124
Eighth Revised Sheet No. 214

El Paso states that these tariff sheets implement the pro forma tariff provisions accepted by the Commission as part of El Paso's reserve capacity pool settlement at Docket No. RP00–336–021.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00434 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–66–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 26, 2003.

Take notice that on November 21, 2003, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, the tariff sheets listed in Appendix A to the filing, with an effective date of January 1, 2004.

El Paso states that these tariff sheets remove the risk sharing and revenue crediting provisions that are due to terminate as of the end of this year.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00436 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR04–4–000]

Enogex Inc.; Notice of Petition for Rate Approval

November 25, 2003.

Take notice that on November 17, 2003, Enogex Inc. (Enogex) tendered for filing a revised fuel tracker for its Enogex System for Fuel Year 2004 as calculated under the terms of Enogex's filed fuel tracker. Enogex seeks an effective date of January 1, 2004.

Enogex states that it is serving notice of the filing and the revised fuel percentage on all current shippers.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion

to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Intervention and Protest Date: December 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00424 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–47–003]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

November 26, 2003.

Take notice that on November 19, 2003, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute First Revised Sheet No. 2004, to become effective May 1, 2003.

On October 20, 2003 Gulf South filed tariff sheets to comply with the Commission's October 3, 2003, Order. Gulf South states that it has determined that section 13.12 was inadvertently deleted in its October 20, 2003, filing and is making this filing to correct this error.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00435 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–67–000]

NGO Transmission, Inc.; Notice of Tariff Filing

November 26, 2003.

Take notice that on November 21, 2003, NGO Transmission, Inc. (NGO Transmission) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of November 22, 2003.

NGO Transmission states that the purpose of the filing is to comply with the Commission's Order issued on October 27, 2003, in Docket Nos. CP03–296–000 and CP03–298–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00437 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–398–004]

Northern Natural Gas Company; Notice of Compliance Filing

November 25, 2003.

Take notice that on November 21, 2003, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 2003:

Substitute Third Revised Sheet No. 125A
Substitute Seventh Revised Sheet No. 226
Fourth Revised Sheet No. 227
Third Revised Sheet No. 228
Original Sheet No. 228A
First Revised Sheet No. 229
Eighth Revised Sheet No. 252
Eighth Revised Sheet No. 267
Substitute Original Sheet No. 267A
Substitute Seventh Revised Sheet No. 268
Sixth Revised Sheet No. 269
Substitute Fourth Revised Sheet No. 285
Substitute First Revised Sheet No. 285A
Substitute Fifth Revised Sheet No. 297

Northern states that the filing is being made in compliance with the Commission's order issued on October 31, 2003 in this proceeding, related to tariff provisions with respect to the technical conference in Northern's on going rate case proceeding.

Northern further states that copies of the filing have been mailed to each of

its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00425 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–18–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

November 26, 2003.

Take notice that on November 21, 2003, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP04–18–000, an application pursuant to §§ 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, for authorization to reduce the maximum allowable operating pressure (MAOP) on its pipeline in Upton and Midland Counties, Texas, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the NGA, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Northern proposes to reduce the MAOP of the 24-inch Plymouth to Spraberry pipeline in Texas to 550 psig from the currently authorized MAOP of 705 psig. Northern states that the pipeline has historically operated at 640 psig and has determined that the reduced psig would be sufficient to meet its contractual firm obligations. It is asserted that the reduction in MAOP would reduce the risk of a potential failure on the pipeline. Northern states that an inspection of the pipeline revealed indications of corrosion, and Northern determined that reducing the MAOP would be the best way to avoid problems in the future. Northern proposes to reduce the MAOP by adjusting regulators located at the abandoned Plymouth station and at the Spraberry station and asserts that no construction would be required.

Any questions concerning this application may be directed to Michael T. Loeffler, Director, Certificates and Community Relations, at (402) 398–7103, or Bret Fritch, Senior Regulatory Analyst, at (402) 398–7140.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Comment Date: January 12, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00430 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–18–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

November 26, 2003.

Take notice that on November 21, 2003, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP04–18–000, an application pursuant to Sections 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, for authorization to reduce the maximum allowable operating pressure (MAOP) on its pipeline in Upton and Midland Counties, Texas, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the NGA, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Northern proposes to reduce the MAOP of the 24-inch Plymouth to Spraberry pipeline in Texas to 550 psig from the currently authorized MAOP of 705 psig. Northern states that the pipeline has historically operated at 640 psig and has determined that the reduced psig would be sufficient to meet its contractual firm obligations. It is asserted that the reduction in MAOP would reduce the risk of a potential failure on the pipeline. Northern states that an inspection of the pipeline revealed indications of corrosion, and Northern determined that reducing the MAOP would be the best way to avoid problems in the future. Northern proposes to reduce the MAOP by adjusting regulators located at the abandoned Plymouth station and at the Spraberry station and asserts that no construction would be required.

Any questions concerning this application may be directed to Michael T. Loeffler, Director, Certificates and Community Relations, at (402) 398–7103, or Bret Fritch, Senior Regulatory Analyst, at (402) 398–7140.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://*

www.ferc.gov, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Comment Date: January 12, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00450 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL04–26–000; QF85–311–004; QF86–734–006]

Sithe Energies, Inc.; Acme POSDEF Partners, L.P.; LUZ Solar Partners III, Ltd.; Notice of Initiation of Proceeding

November 26, 2003.

Take notice that on November 20, 2003, the Commission issued an order in the above-referenced proceedings initiating a proceeding to determine whether Sithe Energies, Inc.'s ownership interests in two generation facilities affect their status as qualifying facilities under the Public Utility Regulatory Policies Act of 1978.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: December 5, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00431 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93–109–020]

Southern Star Central Gas Pipeline, Inc.; Notice of Filing of Refund Report

November 26, 2003.

Take notice that on November 20, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing pursuant to Article III, Paragraph D of the Stipulation and Agreement dated January 31, 2001, in Docket No. RP93–109–017, its refund report of environmental proceeds received from third-party insurers.

Article III states that Southern Star will allocate its pass-through of third-party environmental proceeds, if any, to Southern Star's customers based on firm reservation revenues during the 12 ending September 30.

Southern Star states that it is filing its report of third-party insurance proceeds received during the twelve months ended September 30, 2003. Southern Star states that due to the fact that it received no environmental proceeds during this twelve-month period, there will be no refunds made this year.

Southern Star states that a copy of its filing was served on all jurisdictional customers and interested state commissions, as well as all parties on the Commission's official service list for this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: December 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00438 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–25–000, et al.]

MEP Pleasant Hill Operating, LLC, et al.; Electric Rate and Corporate Filings

November 25, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. MEP Pleasant Hill Operating, LLC; MEP Investments, LLC; Aquila Merchant Services, Inc.; Calpine Corporation; Calpine Energy Services, L.P.

[Docket No. EC04–25–000]

Take notice that on November 19, 2003, MEP Pleasant Hill Operating, LLC (MEP Operating), MEP Investments, LLC (MEP Investments), Aquila Merchant Services, Inc. (AMS), Calpine Corporation (Calpine), and Calpine Energy Services, L.P. (CES) (collectively the Applicants), filed with the Federal Energy Regulatory Commission (Commission) an application for approval pursuant to Section 203 of the Federal Power Act and Section 33 of the Commission's regulations for the Applicants' disposition of (1) MEP Investments' interest in MEP Pleasant Hill, LLC to Calpine or its affiliate, and (2) AMS's interests as seller under certain power sales agreements to CES.

Applicants state that the filing has been served on all state public utilities commission in affected states, specifically Missouri and Kansas.

Comment Date: December 10, 2003.

2. Midwest Independent Transmission System Operator, Inc.

[Docket No. EL03–38–002]

Take notice that on November 19, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing amended and executed Service Agreements for Long-Term Firm Transmission Service between the Midwest ISO and (1) Cargill Power Markets, LLC (Cargill) and (2) Conectiv Energy Supply, Inc. (Conectiv), pursuant to the Commission's October 24, 2003 Letter Order issued in Docket No. EL03–38–001.

The Midwest ISO states that it has served a copy of its filing on each person whose name is listed on the official service list maintained by the Secretary in this proceeding. The Midwest ISO also states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO states that it will provide hard copies to any interested parties upon request.

Comment Date: December 10, 2003.

3. CPV Milford, LLC

[Docket No. EG04–20–000]

On November 24, 2003, CPV Milford, LLC (CPV Milford) filed an application with the Federal Energy Regulatory Commission (Commission) for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

CPV Milford, a Delaware limited liability company, states that it will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities located in Milford, Connecticut. CPV Milford further states that the eligible facilities consist of an approximate 544 MW natural gas fired electric generation plant and related interconnection facilities and the output of the eligible facilities will be sold at wholesale.

Comment Date: December 12, 2003.

4. Quark Power L.L.C.

[Docket No. ER97–2374–014]

Take notice that on November 19, 2003, Quark Power L.L.C. (Quark) tendered for filing notification of a change in status reflecting a departure from the characteristics that the Commission relied upon in approving market-based pricing for Quark.

Comment Date: December 10, 2003.

5. Green Power Partners I LLC

[Docket No. ER04–153–001]

Take notice that on November 19, 2003, Green Power Partners I LLC (Green Power) submitted for filing with the Federal Energy Regulatory Commission an amendment to its November 3, 2003 filing requesting acceptance of a rate schedule pursuant to Section 205 of the Federal Power Act and Section 35.12 of the regulations of the Commission. Green Power requests that the rate schedule attached to the amended filing be designated as Green Power Rate Schedule FERC No. 3, and become effective on the date, if any, the Green Power's wind generation facility is no longer a qualifying facility.

Comment Date: December 10, 2003.

6. Xcel Energy Services Inc.

[Docket No. ER04–201–000]

Take notice that on November 19, 2003 Xcel Energy Services, Inc. (XES), on behalf of Public Service Company of Colorado (PSC), submitted for filing a Notice of Cancellation of a Master Power Purchase and Sale Agreement between Public Service Company of Colorado and the City of Glendale. XES requests that the cancellation become effective as of the date of this filing.

Comment Date: December 10, 2003.

7. Tucson Electric Power Company

[Docket No. ER04–204–000]

Take notice that on November 20, 2003, Tucson Electric Power Company (TEP) filed an Interconnection and Operating Agreement, as amended by Amendment No. 1 to Interconnection and Operating Agreement, between Springerville Unit 3 Holding LLC and TEP (collectively, Interconnection Agreement) under TEP's Open Access Transmission Tariff. TEP requests an effective date of October 21, 2003 for the Interconnection Agreement.

TEP states that it has served a copy of the filing on Springerville Unit 3 Holding LLC.

Comment Date: December 10, 2003.

8. Public Service Company of New Hampshire

[Docket No. ER04–205–000]

Take notice that on November 18, 2003, Public Service Company of New Hampshire (PSNH) tendered for filing Rate Schedule FERC No. 187, a Delivery Services and Interconnection Agreement with Vermont between PSNH and the New Hampshire Electric Cooperative, Inc. (NHEC). PSNH requests an effective date of January 1, 2004.

PSNH states that a copy of this filing was mailed to NHEC, the Office of Attorney General for the State of New Hampshire, the Executive Director of the New Hampshire Public Utilities Commission, and the Office of Consumer Advocate for the State of New Hampshire.

Comment Date: December 10, 2003.

9. Western Systems Power Pool, Inc.

[Docket No. ER04–206–000]

Take notice that on November 19, 2003, the Western Systems Power Pool, Inc. (WSPP) submitted changes to the WSPP Agreement intended to update or clarify certain provisions of the Agreement. The WSPP seeks an effective date of February 1, 2004 for these changes.

WSPP states that copies of the transmittal letter have been served on all state commissions within the United States. NSPP states that the filing has been posted on the WSPP homepage (*www.wspp.org*) thereby providing notice to all WSPP members.

Comment Date: December 10, 2003.

10. Entergy Services, Inc.

[Docket No. ER04–207–000]

Take notice that on November 19, 2003, Entergy Services, Inc., (Entergy)

on behalf of the Entergy Operating Companies, tendered for filing proposed revisions to Section 11 of its Open Access Transmission Tariff (OATT). Entergy states that it specifically, as required by Entergy Services, Inc., 104 FERC ¶ 61,329 (2003), refiled Section 11.3.3, as well as related portions of Sections 11.1 and 11.3.5 of its OATT, in order to clarify when Entergy may require an existing transmission customer to increase previously provided financial assurances which have become insufficient with respect to their ability to protect Entergy against the risk of non-payment because of a transmission customer's increased purchases of transmission services. Entergy requests an effective date of November 20, 2003.

Comment Date: December 10, 2003.

11. Citigroup Energy Inc.

[Docket No. ER04–208–000]

On November 19, 2003, Citigroup Energy Inc. (CEI) petitioned the Commission for an order: (1) Accepting CEI's proposed FERC rate schedule for market-based rates; (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations; (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates; and (4) granting waiver of the 60-day notice period.

Comment Date: December 10, 2003.

12. Old Dominion Electric Cooperative

[Docket No. ER04–209–000]

On November 19, 2003, Old Dominion Electric Cooperative (Old Dominion) filed an application under Section 205 of the Federal Power Act and Section 35.13 of the Commission's Rules and Regulations for approval of a change in the formula rate under its FERC Electric Tariff, Volume No. 1 (Tariff), and various administrative, non-substantive changes to the Tariff. Old Dominion requests an effective date of November 30, 2003.

Old Dominion states that the filing was served upon each of its member cooperatives and the public service commissions in the Commonwealth of Virginia and the states of Delaware and Maryland.

Comment Date: December 3, 2003.

13. WPS Canada Generation, Inc.

[Docket No. ER04–210–000]

Take notice that on November 19, 2003, WPS Canada Generation, Inc. (WPS Canada) filed Original Sheet 2 for its Rate Schedule FERC Nos. 2 and 3, which provide for the recovery of Reactive Supply and Voltage Control from Generation Sources Service. WPS Canada requests an effective date of January 19, 2004.

WPS Canada states that copies of the filing were served upon the Maine Public Service Company, the Northern Maine Independent System Administrator, Inc., and the official service list for Docket Nos. ER03–689–000, *et al.*

Comment Date: December 10, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00420 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–26–000, et al.]

Milford Power Company, LLC, et al.; Electric Rate and Corporate Filings

November 26, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Milford Power Company, LLC

[Docket No. EC04–26–000]

Take notice that on November 21, 2003, Milford Holdings LLC (MH LLC) and El Paso Milford Power I Company, LLC and El Paso Merchant Energy North America Company (El Paso Entities and collectively with MH LLC, Applicants) filed with the Federal Energy Regulatory Commission an application, pursuant to section 203 of the Federal Power Act, and part 33 of the Commission's regulations, seeking authorization for the transfer of ninety-five (95) percent of the membership interests of Milford Power Company, LLC owned by the El Paso Entities from the El Paso Entities to MH LLC. The applicants request expedited consideration of the application.

Comment Date: December 12, 2003.

2. Exelon Generation Company, LLC and Exelon Energy Company

[Docket No. EC04–27–000]

Take notice that on November 21, 2003, Exelon Generation Company, LLC and Exelon Energy Company (Applicants) filed with the Federal Energy Regulatory Commission an application, pursuant to Section 203 of the Federal Power Act for authorization to implement a corporate reorganization. Applicants state that Exelon Energy's ownership will be transferred from Exelon Enterprises Company, LLC to Exelon Generation Company, LLC. Applicants further state that the corporate reorganization will have no adverse effect on competition, rates or regulation. Applicants request expedited consideration of the application.

Comment Date: December 12, 2003.

3. Consolidated Edison Company of New York, Inc.

[Docket No. EC04–28–000]

Take notice that on November 24, 2003, Consolidated Edison Company of New York, Inc. filed an application, pursuant to section 203 of the Federal Power Act for authorization to purchase, acquire or take unsecured evidences of indebtedness of its affiliate Orange and Rockland Utilities, Inc., maturing not more than twelve months after their date of issue up to an amount not in excess of $150 million at any one time outstanding.

Comment Date: December 15, 2003.

4. California Power Exchange Corporation

[Docket No. EL04–28–000]

Take notice that on November 24, 2003, the California Power Exchange Corporation (CalPX) filed a Petition for

Declaratory Order. The petition requests Commission approval for CalPX to enter into a settlement between and among CalPX, Southern California Edison Company and San Diego Gas & Electric Company regarding a billing dispute and participant account summaries. CalPX filed a petition for waiver of the filing fee for the Petition for Declaratory Order.

Comment Date: December 15, 2003.

5. White River Electric Association, Inc.

[Docket No. ER02–2001–000]

Take notice that on July 30, 2003, White River Electric Association, Inc., filed a Request for Waiver of the Order No. 2001 requirement to file Electric Quarterly Reports.

Comment Date: December 16, 2003.

6. Covanta Union, Inc.

[Docket No. ER02–2001–000]

Take notice that on July 30, 2003, Covanta Union, Inc., filed a Request for Waiver of the Order No. 2001 requirement to file Electric Quarterly Reports.

Comment Date: December 16, 2003.

7. Sun River Electric Cooperative, Inc.

[Docket No. ER02–2001–000]

Take notice that on July 30, 2003, Sun River Electric Cooperative, Inc. filed a Request for Waiver of the Order No. 2001 requirement to file Electric Quarterly Reports.

Comment Date: December 16, 2003.

8. New York State Electric & Gas Corporation

[Docket No. ER03–587–006]

Take notice that New York State Electric & Gas Corporation (NYSEG) on November 20, 2003, tendered for filing, in compliance with the Commission's order issued April 29, 2003 in Docket No. ER03–587–000, FERC Rate Schedule 105, an agreement between NYSEG and Connecticut Light & Power Company.

Comment Date: December 11, 2003.

9. New York State Electric & Gas Corporation

[Docket No. ER03–587–007]

Take notice that New York State Electric & Gas Corporation (NYSEG) on November 20, 2003, tendered for filing in compliance with the Commission's order issued April 28, 2003 in Docket No. ER03–587–000, FERC Rate Schedule 27, an agreement between NYSEG and Massachusetts Electric Company.

Comment Date: December 11, 2003.

10. Xcel Energy Services Inc.

[Docket No. ER04–211–000]

Take notice that on November 20, 2003, Xcel Energy Services, Inc. (XES), on behalf of Southwestern Public Service Company (SPS), submitted for filing a Brokering Agreement for Excess Energy (Agreement) between Southwestern Public Service Company and Otter Tail Power Company. XES requests that the Agreement become effective October 16, 2003.

Comment Date: December 11, 2003.

11. United States Department of Energy and Bonneville Power Administration

[Docket No. NJ03–3–001]

Take notice that on November 20, 2003, Bonneville Power Administration filed a Compliance Filing and Motion for Clarification along with a revised Open Access Transmission Tariff regarding, and in accordance with, the Order Granting Petition for Declaratory Order, Subject to the Filing of Tariff Modifications, and Granting Exemption from Filing Fee, 105 FERC ¶ 61,077, issued in this proceeding on October 21, 2003.

Comment Date: December 11, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502-8222 or TTY, (202) 502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00440 Filed 12–2–03; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 696–013—Utah]

PacifiCorp; Notice of Availability of Environmental Assessment

November 26, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for surrender of the license for the American Fork Hydroelectric Project and has prepared an Environmental Assessment (EA) for the project. The project is located on American Fork Creek, near the City of American Fork, about three miles east of Highland, in Utah County, Utah. The project occupies about 28.8 acres of land within the Uinta National Forest, administered by the U.S. Forest Service (FS) and approximately 2,000 feet of the project's flowline passes through the Timpanogos Cave National Monument, administered by the U.S. Department of the Interior, National Park Service (NPS).

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that surrendering the project, with the appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The EA is on file with the Commission and is available for public inspection. Copies of the EA are available for review in Public Reference, Room 2–A at the Commission's offices at 888 First Street, NE, Washington, DC. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. For assistance, contact FERC On Line Support at *FERCOnlineSupport@ferc.gov* or call toll free at (866) 208–3676, or for TTY contact (202) 502–8659.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please reference Project No. 696–013 on all comments. Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling''link.

For further information, please contact Kenneth Hogan at (202) 502–8434.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00433 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

November 25, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 12477–000.

c. *Date filed:* October 20, 2003.

d. *Applicant:* Southern Nevada Water Authority (Authority).

e. *Name of Project:* Horizon Ridge Small Conduit Hydroelectric Project.

f. *Location:* The project would be located in the existing Horizon Ridge Rate-of-Flow Control (ROFC) station upstream of the Horizon Ridge Reservoir in southeastern Las Vegas, Clark County, Nevada. The Authority's water is diverted from the Colorado River at Lake Mead.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a– 825r.

h. *Applicant Contact:* Mr. Rodney J. Clark, Southern Nevada Water Authority, 1900 East Flamingo Road, Suite 170, Las Vegas, NV 89119, (702) 862–3428.

i. *FERC Contact:* James Hunter, (202) 502–6086.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission by December 26, 2003. All reply comments must be filed with the Commission by January 12, 2004.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The proposed project would consist of: (1) A generating unit with a rated capacity of 605 kilowatts replacing the pressure dissipating valve in one of three pipelines in the ROFC station, and (2) the other two pipelines in the station, to be used as bypass facilities. The average annual energy production would be 3.515 gigawatt hours. Power produced by the project would help offset the energy requirements of operating the Horizon Ridge pumping facilities.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits (P–12477) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h. above.

n. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this

proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00423 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 26, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Recommendation Adoption for Winter Minimum Flows.

b. *Project No:* 405–059.

c. *Date Filed:* October 15, 2003.

d. *Applicant:* Susquehanna Electric Company.

e. *Name of Project:* Conowingo Hydro Station.

f. *Location:* On the Susquehanna River in Harford and Cecil counties in Maryland, and York and Lancaster counties in Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Ron Smith, Conowingo Hydro Station, Susquehanna Electric Company, 2569 Shures Landing Road, Darlington, MD 21034–1503, 410–457–2516.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. John Novak at (202) 502–6076, or e-mail address: *John.Novak@ferc.gov.*

j. *Deadline for filing comments and or motions:* December 26, 2003.

k. *Description of Request:* The licensee proposes to provide a winter flow regime, during the period of December 1 through February 28, of 3500 cfs or natural river flow (whichever is lower) with cessation of flow permitted for up to six hours followed by continuous flows of 3500 cfs or inflow (whichever is lower) for a period equal to or greater than the period of no discharge. The licensee indicates a minimum winter flow has been implemented at the Conowingo Hydroelectric station since March 1994 based upon initial study results and discussion with the Maryland DNR, however the finalized report and recommendation were not previously filed with the Commission.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00432 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM04–2–000]

Rules Concerning Certification of an Electric Reliability Organization and the Establishment, Approval, and Enforcement of Electric Reliability Standards; Supplemental Notice of Conference

November 24, 2003.

As announced in the notice issued November 17, 2003 (as corrected November 18, 2003), the Federal Energy Regulatory Commission (Commission) will hold a conference on Monday, December 1, 2003, at Commission headquarters, 888 First Street, NE., Washington, DC, in the Commission Meeting Room (Room 2C), at 1:30 p.m. This supplemental Notice provides additional information regarding the conference.

Issues for Discussion

The conference will address the following topics related to ensuring the reliability of the nation's bulk power system:

1. *Interim Report: Causes of the August 14th Blackout in the United States and Canada* (''*Blackout Report*''), prepared by the U.S.–Canada Power System Outage Task Force.

2. Review of the current status of institutions and practices for ensuring the reliability of the bulk power system.

3. What, if anything, the Commission should do to promote a reliable bulk power system.

Format

Topics 1 and 2 will consist of presentations by Commission Staff as well as invited outside speakers. Conference attendees should prepare to address topic 3 during an ''open microphone'' session.

Remote (Internet) Listening and Viewing

While the November 17, 2003 Notice indicated that the opportunity for live remote listening and viewing of the conference over the Internet would be available for a fee, the opportunity for remote listening and viewing will not be available for the conference.

For additional information please contact Jonathan First, 202–502–8529 or by e-mail at *Jonathan.First@ferc.gov* or William Longenecker, 202–502–8570 or by e-mail at *William.Longenecker@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00421 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2014–006, ER03–1272–000, EL03–132–000, EL02–101–000]

CLECO Power LLC, Dalton Utilities, Entergy Services, Inc., Georgia Transmission Corporation, JEA, MEAG Power, Sam Rayburn G&T Electric Cooperative, Inc., South Carolina Public Service Authority, Southern Company Services, Inc., City of Tallahassee, Florida; Supplemental Notice of Technical Conference

November 25, 2003.

The November 7, 2003 Notice of Technical Conference in this proceeding indicated that a technical conference will be held on December 8–9, 2003 at 10 a.m. This conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Parties that will participate by phone should contact Mark Gratchen at (202) 502–6274 no later than Wednesday, December 3, 2003.

The agenda includes time for open discussion and the Commission wishes to hear from all parties. If any party wishes to make a formal presentation, please contact Mark Gratchen at (202) 502–6274 no later than Wednesday, December 3, 2003.

The conference will be transcribed. Transcripts will be available to view electronically under the above listed docket numbers seven days after the conference.

The agenda for the technical conference is set forth in the Attachment to this notice.

Magalie R. Salas,

Secretary.

Technical Conference Agenda

December 8, 2003

10 a.m.–12:30 p.m.—Discussion of Entergy's Generator Operator Limits (GOL) Procedure

Opening Comments and Introduction

Entergy presentation summarizing its November 3, 2003 Report on GOLs

Questions and Discussion of November 3, 2003 GOL Report

This session will include a discussion of Entergy's GOL Report. Topics will be discussed in the following order:

The Implementation Period

Standard of Review

Non-Discriminatory Application (including analytical framework, source data and results/conclusions)

Availability of Transfer Capability

Sufficiency of Transfer Capability (including analytical framework, source data and results/conclusions)

Increased Availability of Transfer Capability (including analytical framework, source data and results/conclusions)

Potential to Withhold Transfer Capability (including analytical framework, source data and results/conclusions).

Intervenor Presentations

Modifications to GOL Process and Summary of Parties' Positions

12:30 p.m.–1:30 p.m.—Lunch

1:30 p.m.–4 p.m.—Discussion of Entergy's Available Flowgate Capability (AFC) Proposal

Entergy presentation: Overview and steps of AFC process; differences with GOL/ATC

Questions and Discussion of Entergy's AFC Proposal. Topics will be discussed in the following order:

Flowgate Criteria: Identification of specific criteria to be used and justification for them. Use of existing studies to identify the base set of flowgates. Specification of and justification for criteria to be used to add and delete monitored flowgates. (*See* Entergy's November 12, 2003 response (November response) to question no. 1 in the Division Director Letter issued in Docket No. ER03-1272-000 on October 22, 2003 (Division Director Letter).)

Base case models and assumptions for AFC process and comparison to GOL process. (*See* November response to question no. 3 in the Division Director Letter.)

Importance of Response Factors in AFC process and support for Threshold level chosen by Entergy. (*See* November response to question nos. 4, 5, and 6 in the Division Director Letter.)

Transparency of process, implementation timetable and other issues. (*See* November response to question nos. 7, 8, and 9 in the Division Director Letter.)

December 9, 2003

10:00 p.m.–12:30 p.m.—Continuation of Discussion on AFCs, if needed; Discussion of Entergy's Weekly Procurement Process (WPP)

- Staff Summary of the Commission Order issued in ER04–35–000 and issues raised.
- Entergy's presentation on the WPP

I. Overview

II. Structure of WPP

III. Role of Independent Oversight

IV. WPP Products

V. Redispatch

VI. Interaction with GOLs/AFCs

12:30 p.m.–1:30 p.m.—Lunch

1:30 p.m.–3:45 p.m.—Questions and Discussion of Entergy's WPP

- Topics will be discussed in the following order; the questions are intended to facilitate discussion and are not limitations to the discussion:

1. Structure of the Weekly Procurement Process—What type of entity is appropriate for managing the WPP? Which entity will manage the WPP?
2. Role of Independent Procurement Monitor (IPM)—What are the roles, functions, and responsibilities of the IPM?
3. WPP Products including redispatch
4. Effect of WPP on GOLs/AFCs—What is the effect of the WPP on transfer capabilities?
5. Future Developments— How will AFC and WPP operate within the SeTrans RTO?

3:45 p.m.–4 p.m.—Closing Remarks

[FR Doc. E3–00429 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0001; FRL–7336–8]

National Pollution Prevention and Toxics Advisory Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (Public Law 92–463), EPA gives notice of a 2–day meeting of the National Pollution Prevention and Toxics Advisory Committee (NPPTAC). The purpose of the NPPTAC is to provide advice and recommendations to EPA regarding the overall policy and operations of the programs of the Office of Pollution Prevention and Toxics (OPPT).

DATES: The meeting will be held on January 7, 2004, from 10 a.m. to 5:30 p.m., and January 8, 2004, from 8:30 a.m. to noon.

Registrations to attend the meeting, identified as NPPTAC January 2004 meeting, must be received on or before December 30, 2003. Registrations will also be accepted at the meeting.

Requests to provide oral comments at the meeting, identified as NPPTAC January 2004 meeting, must be received in writing on or before December 22, 2003.

Written comments, identified as NPPTAC January 2004 meeting, may be submitted at any time. Written comments received on or before December 22, 2003 will be forwarded to the NPPTAC members prior to or at the meeting.

ADDRESSES: The meeting will be held at the Four Points by Sheraton Hotel, 1201 K Street, NW., Washington, DC.

For address information concerning registration, the submission of written comments, and requests to present oral comments, refer to Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Mary Hanley, Office of Pollution Prevention and Toxics (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9891; e-mail address: *npptac.oppt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who have an interest in or may be required to manage pollution prevention and toxic chemical programs, individuals, groups concerned with environmental justice, children's health, or animal welfare, as they relate to OPPT's programs under the Toxic Substances Control Act (TSCA) and the Pollution Prevention Act (PPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in the activities of the NPPTAC. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

To register to attend the meeting: Pre-registration for the January 2004 NPPTAC meeting and requests for special accommodations may be made by visiting the NPPTAC web site at: *http://www.epa.gov/oppt/npptac/meetings.htm*. Registration will also be available at the meeting. Special accommodations may also be requested by calling (202) 564–9891 and leaving your name and telephone number.

To request an opportunity to provide oral comments: You must register first in order to request an opportunity to provide oral comments at the January 2004 NPPTAC meeting. To register visit the NPPTAC web site at: *http://www.epa.gov/oppt/npptac/meetings.htm*. If you have problems downloading the registration form, please e-mail us at *npptac.oppt@epa.gov* or leave a message at (202) 564–9891. Please indicate your name and telephone number.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0001. The official public docket consists of the documents specifically related to the NPPTAC, any public comments received, and other information related to the NPPTAC. 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 EPA's Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. EPA's Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. EPA's Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to 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. 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.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

C. 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 ID number in the subject line on the first page of your comment.

To submit written comments to the docket: Identify the submission as OPPT–2002–0001 docket, NPPTAC January 2004 meeting.

Electronically: At *http://www.epa.gov/edocket/*, search for OPPT–2002–0001, and follow the directions to submit comments.

By mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), OPPT–2002–0001, 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

II. Background

The proposed agenda for the NPPTAC meeting includes: The High Production Volume Challenge Program; Pollution Prevention, Risk Assessment; risk management; risk communication, and coordination with Tribes and other stakeholders. The meeting is open to the public.

III. How Can I Request to Participate in this Meeting?

You may register to attend the meeting by filling out the registration form according to the instructions listed under Unit I.A. Please note that registration will assist in planning adequate seating; however, members of the public can register the day of the meeting, therefore all seating will be

available on a first come, first serve basis.

Requests to provide oral comments at the meeting must be submitted in writing on or before December 22, 2003, with a registration form. Please note that time for oral comments will be 2 to 5 minutes per speaker, depending on the number of requests received.

Please make sure to indicate in your registration if you require special accommodations. In order to provide special accommodations, the request should be received by December 22, 2003.

You may submit written comments to the docket listed under Unit I.B. Written comments can be submitted at any time. If written comments are submitted on or before December 22, 2003, they will be provided to the NPPTAC members prior to or at the meeting. If you provide written comments at the meeting, 35 copies will be needed. Do not submit any information that is considered CBI.

List of Subjects

Environmental protection, NPPTAC, Pollution prevention, Toxics, Toxic chemicals, Chemical health and safety.

Dated: November 21, 2003.

Charles M. Auer,

Director, Office of Pollution, Prevention, and Toxics

[FR Doc. 03–30048 Filed 12–2–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7592–9]

Chevron Chemical Company Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has entered into an Agreement for Recovery of Past and Future UAO Response & Oversight Costs (Agreement) at the Chevron Chemical Company Superfund Site (Site) located in Orange County, Orlando, Florida, with Chevron Environmental Management Company and Chevron Chemical Company, a division of Chevron U.S.A., Inc. EPA will consider public comments on the Agreement until January 2, 2004. EPA may withdraw from or modify the Agreement should such comments disclose facts or considerations which indicate the Agreement is inappropriate, improper, or inadequate. Copies of the Agreement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Superfund Enforcement & Information Management Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Greg Armstrong at the above address within 30 days of the date of publication.

Dated: November 17, 2003.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information, Management Branch, Waste Management Division.

[FR Doc. 03–30045 Filed 12–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7592–6]

Proposed Administrative Cost Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act; In the Matter of Master Metals, Inc. Site, Detroit, MI

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of response costs concerning the Master Metals Superfund Site, including the Detroit Lead Deposition Screening Project (''the Site'') in Detroit, Michigan, with six parties: NL Industries, Inc., Honeywell International Inc., Johnson Controls Battery Group, Inc., General Motors Corporation, Ford Motor Company and DaimlerChrysler (''the settling parties''). The settlement requires the settling parties to: (1) Implement the remedies selected in U.S. EPA's action memorandum dated February 5, 2003 and action memorandum dated July 16, 2003 for the Site; (2) pay response costs incurred at the Site between November 16, 2001 and the effective date of the settlement (''interim response costs''), except for the first $250,000 of these response costs; (3) pay future response costs, including costs of overseeing the work to be performed at the Site.

In exchange for the work to be performed and the payments, the United States covenants not to sue or take administrative action pursuant to Sections 106, 107 and 122 of CERCLA, 42 U.S.C. 9606, 9607 and 9622 for the work, interim response costs and future response costs. In addition, the settling parties are entitled to protection from contribution actions or claims as provided by Sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f) and 9622(h)(4), for the work, interim response costs and future response costs incurred at the Site.

For thirty (30) days after the date of publication of this notice, the Agency will receive written comments relating to the cost recovery provisions of the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at U.S. EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois, 60604, and at the Detroit Public Library, Detroit, MI.

DATES: Comments must be submitted on or before January 2, 2004.

ADDRESSES: The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois, 60604. A copy of the proposed settlement may be obtained from Janet Carlson, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604, telephone (312) 886–6059. Comments should reference the Master Metals, Inc. Superfund Site, Detroit, Michigan, and EPA Docket No. VW03C754, and should be addressed to Janet Carlson, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Janet Carlson, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604, telephone (312) 886–6059.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, et. seq.

Dated: August 19, 2003.

James N. Mayka,

Acting Director, Superfund Division.

[FR Doc. 03–30047 Filed 12–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7593–1]

Final Reissuance of a General NPDES Permit for Facilities Related to Oil and Gas Extraction on the North Slope of the Brooks Range, Alaska—Permit Number AKG–33–0000

AGENCY: Environmental Protection Agency.

ACTION: Final Notice of reissuance of a general permit.

SUMMARY: On April 10, 2002, the general permit (GP) regulating activities related to the extraction of oil and gas on the North Slope of the Brooks Range in the state of Alaska expired. On May 24, 2003, EPA proposed to reissue this GP. There was a 45 day comment period. During the comment period, EPA received 5 comment letters on the GP. A Response to Comments was prepared for the GP. The Response to Comments also addresses comments made on the Finding of No Significant Impact (FNSI) coverage under this GP for the new source facility, BP Exploration (Alaska), Inc.'s Badami. Upon submission of a new Notice of Intent (NOI), Badami will be reauthorized with the number AKG–33–0001. An NOI must be submitted before EPA will authorize coverage under this GP.

DATES: The GP will be effective January 2, 2004.

ADDRESSES: Copies of the GP and Response to Comments are available upon request. Written requests may be submitted to EPA, Region 10, 1200 Sixth Avenue OW–130, Seattle, WA 98101. Electronic requests may be mailed to: *washington.audrey@epa.gov.* or *godsey.cindi@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the GP, Fact Sheet and Response to Comments are available upon request. Requests may be made to Audrey Washington at (206) 553–0523 or to Cindi Godsey at (907) 271–6561. Requests may also be electronically mailed to: *washington.audrey@epa.gov* or *godsey.cindi@epa.gov*

These documents may also be found on the EPA Region 10 Web site at *www.epa.gov/r10earth/* then click on Water Quality, Permits (under NPDES) and then on recently issued permits under EPA Region 10 Information.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

The state of Alaska, Department of Environmental Conservation (ADEC), on November 19, 2003, has certified that the subject discharges comply with the applicable provisions of sections 208(e), 301, 302, 306 and 307 of the Clean Water Act.

The state of Alaska, Alaska Department of Natural Resources, Office of Project Management and Permitting (OPMP), has conducted a review for consistency with the Alaska Coastal Management Program (ACMP) and on July 22, 2003, agreed with EPA's determination that the general permit is consistent with the Alaska Coastal Management Program (ACMP).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, a Federal agency must prepare an initial regulatory flexibility analysis ''for any proposed rule'' for which the agency ''is required by section 553 of the Administrative Procedure Act (APA), or any other law, to publish general notice of proposed rulemaking.'' The RFA exempts from this requirement any rule that the issuing agency certifies ''will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' EPA has concluded that NPDES general permits are permits, not rulemakings, under the APA and thus not subject to APA rulemaking requirements or the RFA. Notwithstanding that general permits are not subject to the RFA, EPA has determined that this GP, as issued, will not have a significant economic impact on a substantial number of small entities.

Dated: November 20, 2003.

Robert R. Robichaud,

Acting Associate Director, Office of Water, Region 10, Environmental Protection Agency.

[FR Doc. 03–30046 Filed 12–2–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

November 24, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 2, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via Internet at *Kim_A._Johnson@omb.eop.gov,* and Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission has requested emergency OMB review of this collection with an approval by December 31, 2003.

OMB Control Number: 3060–XXXX.

Title: Digital Broadcast Content Protection, MB Docket No. 02–230.

Type of Review: New collection.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,520.

Estimated Time per Response: 2 to 40 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 3,800 hours.

Total Annual Cost: None.

Needs and Uses: On November 4, 2003, the FCC released the Report and

Order and Further Notice of Proposed Rulemaking (''Order''), *In the Matter of Digital Broadcast Content Protection,* MB Docket No. 02–230, FCC 03–273. The Order establishes a redistribution control content protection system for digital broadcast television in order to prevent the widespread indiscriminate redistribution of high value digital broadcast content and to assure the continued availability of such content to broadcast outlets. The Order adopts use of an ATSC flag, which can be imbedded in DTV content to signal to consumer electronics devices to protect such content from indiscriminate redistribution.

In order for this protection system to work, demodulators integrated within, or produced for use in, DTV reception devices, including PC and IT products, (''Covered Demodulator Products'') must recognize and give effect to the ATSC flag pursuant to certain compliance and robustness rules. In particular, content that is marked with the ATSC flag must be handled in a protected fashion through the use of digital content protection and recording technologies. In order to ensure that digital content is being adequately protected, such technologies must be reviewed and approved for use. The Order establishes interim procedures by which proponents of digital content protection and recording technologies can certify to the Commission that such technologies are appropriate for use in Covered Demodulator Products, subject to public notice and comment.

To facilitate enforcement and compliance, the Order adopts a written commitment regime whereby manufacturers or importers of ATSC demodulators obtain from buyers of such products a written commitment that they will incorporate such demodulators into compliant and robust devices or sell or distribute to third parties that have also made such written commitment. The Order also adopts a written commitment regime to ensure that manufacturers or importers of Peripheral TSP Products (products where the demodulator and transport stream processor are physically separate) will abide by the Demodulator Products compliance and robustness rules.

The interim approval process for digital content protection and recording technologies and the written commitment regime are essential components of the Commission's redistribution control content protection system for digital broadcast television. These information collections ensure objectivity and transparency as a part of this process.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30003 Filed12–2–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC, offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011679–005.

Title: ASF/SERC Agreement.

Parties:

China Shipping Container Lines, Co. Ltd.;
COSCO Container Lines Co., Ltd.;
Evergreen Marine Corp. (Taiwan) Ltd.;
Hanjin Shipping Co., Ltd.;
Hyundai Merchant Marine Co., Ltd.;
Kawasaki Kisen Kaisha, Ltd.;
Mitsui O.S.K. Lines Ltd.;
Nippon Yusen Kaisha;
Orient Overseas Container Line Ltd.; and
Yang Ming Marine Transport Corp.; and
Wan Hai Lines Ltd.

Synopsis: The amendment adds APL Co. PTE Ltd. and American President Lines, Ltd. (as a single party) and Sinotrans Container Lines Co., Ltd. as parties to the agreement.

Dated: November 28, 2003.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Acting Assistant Secretary.

[FR Doc. 03–30129 Filed 12–2–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

MSL Global Logistics Inc., 160–19 Rockaway Blvd., Jamaica, NY 11434, Officers: Chester Tong, President (Qualifying Individual), Lily Tong, Vice President.

Neway Logistics, Inc., 5959 W. Century Blvd., #557, Los Angeles, CA 90045, Officers: Seung Y. Cha (Kevin Cha), President/CEO (Qualifying Individual), Sue Cha, Chairman.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Dip Shipping Company, 3550 Grandlake Street, Apt. E–203, Kenner, LA 70065, Officer: Roberto Dip, President (Qualifying Individual).

Venture Logistics, 10820 NW. 30 Street, Miami, FL 33172, Officers: Anly Fernandez, Traffic Manager (Qualifying Individual), Otto Ortega, President/Director.

Dated: November 28, 2003.

Karen V. Gregory,

Acting Assistant Secretary.

[FR Doc. 03–30128 Filed 12–2–03; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the International Subcommittee of the Presidential Advisory Council on HIV/AIDS

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the International Subcommittee of the Presidential Advisory Council on HIV/AIDS (PACHA) will host a townhall meeting. This townhall meeting is open to the public. A description of PACHA's functions is included with this notice.

DATE AND TIME: Thursday, December 18, 2003, 1 p.m. to 5 p.m.

ADDRESS: National Press Club, 529 14th Street, NW., Main Ballroom, 13th Floor, Washington, DC 20045.

FOR FURTHER INFORMATION CONTACT: Josephine Bias Robinson, Acting

Executive Director, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, 200 Independence Avenue, SW, Room 701H, Washington, DC 20201; (202) 690–5560. Information about PACHA and the draft townhall meeting agenda will be posted on the Council's Web site at *http://www.pacha.gov.* Directions to the National Press Club can be obtained through the Web site at *http://www.press.org* or by calling (202) 662–7500.

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. PACHA was established to serve solely as an advisory body to the Secretary of Health and Human Services. The Council is composed of not more than 35 members. Council membership is determined by the Secretary from individuals who are considered authorities with particular expertise in, or knowledge of, matters concerning HIV/AIDS.

The International Subcommittee is hosting this townhall meeting for the purpose of eliciting public comment on the implementation of the President's Emergency Plan for AIDS Relief. Individuals, agencies, and organizations with practical experience implementing health programs in the developing countries are asked to consider the following questions in preparing their oral or written comments: (1) What lessons can you provide/share regarding planning, implementation, and outcome measurement strategies that have worked best and what did not work and why?; (2) What are the vital aspects of effective partnerships and with whom?; and (3) How have you been able to effectively involve people living with HIV/AIDS in your work?

Public attendance at the townhall meeting is limited to space available and pre-registration is required. Any individual who wishes to participate should call the telephone number listed in the contact information to register. For purposes of planning and coordination, individuals are asked to designate an affiliation from the following categories: (1) Non-Governmental/Community-Based Organization (NGO/CBO); (2) Academic and/or Research Institution; (3) Faith-Based Organization; (4) Private Sector Sponsored Organization; or (5) Other. Individuals must provide a photo ID for entry into the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person.

Members of the public will have the opportunity to provide comments at the townhall meeting. Pre-registration is required for public comment. Public comment will be limited to three (3) minutes per speaker. Any members of the public who wish to have printed material distributed to the International Subcommittee members should submit materials to the Acting Executive Director, PACHA, electronically at *info@phnip.com,* prior to close of business December 15, 2003. Printed text cannot exceed five (5) pages.

Dated: November 26, 2003.

Josephine Bias Robinson,

Executive Director (Acting), Presidential Advisory Council on HIV/AIDS.

[FR Doc. 03–30036 Filed 12–2–03; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the State Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2004 Through September 30, 2005

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice.

SUMMARY: The Federal Medical Assistance Percentages and Enhanced Federal Medical Assistance Percentages for Fiscal Year 2005 have been calculated pursuant to the Social Security Act (the Act). These percentages will be effective from October 1, 2004 through September 30, 2005. This notice announces the calculated ''Federal Medical Assistance Percentages'' and ''Enhanced Federal Medical Assistance Percentages'' that we will use in determining the amount of Federal matching for State medical assistance (Medicaid) and State Children's Health Insurance Program (SCHIP) expenditures, and Temporary Assistance for Needy Families (TANF) Contingency Funds, the federal share of Child Support Enforcement collections, Child Care Mandatory and Matching Funds of the Child Care and Development Fund, Foster Care Title IV–E Maintenance payments, and Adoption Assistance payments. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Programs under title XIX of the Act exist in each jurisdiction; programs under titles I, X, and XIV operate only in Guam and the Virgin Islands; while a program under title XVI (Aid to the Aged, Blind, or Disabled) operates only in Puerto Rico. Programs under title XXI began operating in fiscal year 1998. The percentages in this notice apply to State expenditures for most medical services and medical insurance services, and assistance payments for certain social services. The statute provides separately for Federal matching of administrative costs.

Sections 1905(b) and 1101(a)(8)(B) of the Act require the Secretary of Health and Human Services to publish the Federal Medical Assistance Percentages each year. The Secretary is to figure the percentages, by formulas in sections 1905(b) and 1101(a)(8)(B), from the Department of Commerce's statistics of average income per person in each State and in the Nation as a whole. The percentages are within the upper and lower limits given in section 1905(b) of the Act. The percentages to be applied to the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands are specified in statute, and thus are not based on the statutory formula that determines the percentages for the 50 states.

The ''Federal Medical Assistance Percentages'' are for Medicaid. Section 1905(b) of the Act specifies the formula for calculating Federal Medical Assistance Percentages as follows:

> ''Federal medical assistance percentage'' for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum, (2) the Federal medical assistance percentage for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 50 per centum.

A provision in the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of

2000 modified the formula to calculate the percentages to be applied to Alaska for purposes of titles XIX and XXI of the Act for fiscal years 2001 through 2005. For Alaska only, the formula requires dividing the state's three-year average per capita income by 1.05 instead of 1.0. In addition, section 4725 of the Balanced Budget Act of 1997 amended section 1905(b) to provide that the Federal Medical Assistance Percentage for the District of Columbia for purposes of titles XIX and XXI shall be 70 percent. For both Alaska and the District of Columbia, we note under the table of Federal Medical Assistance Percentages the rates that apply in certain other programs calculated using the formula otherwise applicable, and the rates that apply in certain other programs pursuant to section 1118 of the Social Security Act.

Section 2105(b) of the Act specifies the formula for calculating the Enhanced Federal Medical Assistance Percentages as follows:

The ''enhanced FMAP'', for a State for a fiscal year, is equal to the Federal medical assistance percentage (as defined in the first sentence of section 1905(b)) for the State increased by a number of percentage points equal to 30 percent of the number of percentage points by which (1) such Federal medical assistance percentage for the State, is less than (2) 100 percent; but in no case shall the enhanced FMAP for a State exceed 85 percent.

The ''Enhanced Federal Medical Assistance Percentages'' are for use in the State Children's Health Insurance Program under Title XXI, and in the Medicaid program for certain children for expenditures for medical assistance described in sections 1905(u)(2) and 1905(u)(3) of the Act. There is no specific requirement to publish the Enhanced Federal Medical Assistance Percentages. We include them in this notice for the convenience of the States.

EFFECTIVE DATES: The percentages listed will be effective for each of the 4 quarter-year periods in the period beginning October 1, 2004 and ending September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Adelle Simmons or Robert Stewart, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 442E—Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, (202) 690–6870.

(Catalog of Federal Domestic Assistance Program Nos. 93.558: TANF Contingency Funds; 93.563: Child Support Enforcement; 93–596: Child Care Mandatory and Matching Funds of the Child Care and Development Fund; 93.658: Foster Care Title IV–E; 93.659: Adoption Assistance; 93.769: Ticket-to-Work and Work Incentives Improvement Act (TWWIIA) Demonstrations to Maintain Independence and Employment; 93.778: Medical Assistance Program; 93.767: State Children's Health Insurance Program)

Dated: November 26, 2003.

Tommy G. Thompson,

Secretary of Health and Human Services.

FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 2004–SEPTEMBER 30, 2005

[Fiscal year 2005]

State	Federal medical assistance percentages	Enhanced Federal medical assistance percentages
Alabama	70.83	79.58
Alaska**	57.58	70.31
American Samoa*	50.00	65.00
Arizona	67.45	77.22
Arkansas	74.75	82.33
California	50.00	65.00
Colorado	50.00	65.00
Connecticut	50.00	65.00
Delaware	50.38	65.27
District of Columbia**	70.00	79.00
Florida	58.90	71.23
Georgia	60.44	72.31
Guam*	50.00	65.00
Hawaii	58.47	70.93
Idaho	70.62	79.43
Illinois	50.00	65.00
Indiana	62.78	73.95
Iowa	63.55	74.49
Kansas	61.01	72.71
Kentucky	69.60	78.72
Louisiana	71.04	79.73
Maine	64.89	75.42
Maryland	50.00	65.00
Massachusetts	50.00	65.00
Michigan	56.71	69.70
Minnesota	50.00	65.00
Mississippi	77.08	83.96
Missouri	61.15	72.81
Montana	71.90	80.33
Nebraska	59.64	71.75
Nevada	55.90	69.13
New Hampshire	50.00	65.00
New Jersey	50.00	65.00
New Mexico	74.30	82.01
New York	50.00	65.00
North Carolina	63.63	74.54
North Dakota	67.49	77.24

FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 2004–SEPTEMBER 30, 2005—Continued

[Fiscal year 2005]

State	Federal medical assistance percentages	Enhanced Federal medical assistance percentages
Northern Mariana Islands*	50.00	65.00
Ohio	59.68	71.78
Oklahoma	70.18	79.13
Oregon	61.12	72.78
Pennsylvania	53.84	67.69
Puerto Rico*	50.00	65.00
Rhode Island	55.38	68.77
South Carolina	69.89	78.92
South Dakota	66.03	76.22
Tennessee	64.81	75.37
Texas	60.87	72.61
Utah	72.14	80.50
Vermont	60.11	72.08
Virgin Islands*	50.00	65.00
Virginia	50.00	65.00
Washington	50.00	65.00
West Virginia	74.65	82.26
Wisconsin	58.32	70.82
Wyoming	57.90	70.53

*For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI will be 75 per centum.
**The values for Alaska and the District of Columbia in the table were set for the state plan under titles XIX and XXI and for capitation payments and DSH allotments under those titles. For other purposes, including programs remaining in Title IV of the Act, the percentage for Alaska is 53.23 and for D.C is 50.00.

[FR Doc. 03–30095 Filed 11–28–03; 12:19 pm]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0106]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Submission of Petitions: Food Additive, Color Additive (Including Labeling), and Generally Recognized as Safe Affirmation; and Electronic Submission Using FDA Forms 3503 and 3504

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Submission of Petitions: Food Additive, Color Additive (Including Labeling), and Generally Recognized as Safe Affirmation; and Electronic Submission Using FDA Forms 3503 and 3504'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 28, 2003 (68 FR 44342), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0016. The approval expires on November 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: November 25, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30029 Filed 12–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0261]

Determination of Regulatory Review Period for Purposes of Patent Extension; STRATTERA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for STRATTERA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions 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: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product STRATTERA (atomoxetine hydrochloride). STRATTERA is indicated for the treatment of attention-deficit/hyperactivity disorder. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for STRATTERA (U.S. Patent No. 5,658,590,) from Eli Lilly & Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 16, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of STRATTERA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for STRATTERA is 7,718 days. Of this time, 7,307 days occurred during the testing phase of the regulatory review period, while 411 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: October 11, 1981. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 11, 1981.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: October 12, 2001. FDA has verified the applicant's claim that the new drug application (NDA) for STRATTERA (NDA 21–411) was initially submitted on October 12, 2001.

3. *The date the application was approved*: November 26, 2002. FDA has verified the applicant's claim that NDA 21–411 was approved on November 26, 2002.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 685 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written comments and ask for a redetermination by February 2, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by June 1, 2004. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 30, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–30028 Filed 12–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–03–7000]

Memorandum of Understanding Between the Food and Drug Administration and Agricultural Marketing Service, United States Department of Agriculture

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Food and Drug Administration and Agricultural Marketing Service, United States Department of Agriculture. The purpose of the MOU is to ensure that sponsors of new antimicrobial animal drugs have access to an effective means for evaluating the effects of their drugs on current Food Safety and Inspection Service detection tests.

DATES: The agreement became effective January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Valerie Reeves, Center for Veterinary Medicine (HFV–151), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6973.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108 (c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: November 21, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

225-03-7000

MEMORANDUM OF UNDERSTANDING
Between the
Agricultural Marketing Service
United States Department of Agriculture
and the
Food and Drug Administration
United States Department of Health and Human Services

NAME OF PROJECT: Determination of the Reactivity of New Animal Drugs in Food Safety and Inspection Service (FSIS) Antimicrobial Detection Tests.

OBJECTIVE: The objective of this Memorandum of Understanding (MOU) is to ensure that sponsors of new antimicrobial animal drugs have access to an effective means for evaluating the effects of their drugs on current FSIS detection tests.

FSIS conducts screening and confirmation assays, based on microbial growth inhibition, to detect antimicrobial drug residues in animal tissue used for human food. These assays must be sufficiently reliable because they are important for ensuring food safety. However, new antimicrobial drugs have the potential to interfere with the current assays and FSIS's ability to correctly interpret the results. In addition to FSIS and CVM, manufacturers of antimicrobial animal drugs have an interest in avoiding such interference, particularly when interference causes a test to indicate a false positive. For these reasons, the U.S. Department of Health and Human Services, Food and Drug Administration (FDA) requests that sponsors evaluate the effect of the antimicrobial new animal drugs on the residue detection tests FSIS commonly uses. This information is used in creating strategies to assure the continued reliability of the tests used to monitor food safety.

In FDA's experience, companies that sponsor new animal drugs often do not have ready access to laboratories that can properly evaluate the effects of their drugs on current FSIS detection tests. The Science and Technology Programs of the U.S. Department of Agriculture, Agricultural Marketing Service (AMS), has the ability to perform the necessary evaluation on a fee for service basis. Therefore, FDA and AMS, through this MOU, are agreeing to make that service available to drug sponsors.

EFFECTIVE DATE: Date of final signature.

ORGANIZATION: For AMS, members of the Microbiology Laboratory, USDA, AMS, Eastern Laboratory will perform the analyses, and the Laboratory Director will supervise them. The laboratory analysis will be performed at:

USDA, AMS, Science & Technology
National Science Laboratory
801 Summit Crossing Place, Suite B
Gastonia, North Carolina 28054

AMS contact: Laboratory Director
Phone: 704-867-3873
FAX: 704-853-2800

The FDA office responsible for reviewing the human food safety aspects of new animal drugs is the Center for Veterinary Medicine, Office of New Animal Drug Evaluation, Division of Human Food Safety. This office is located at:

Center for Veterinary Medicine
Division of Human Food Safety (HFV-150)
7500 Standish Place
Rockville, MD 20855

FDA contact: Director, Division of Human Food Safety (HFV-150)
Office of New Animal Drug Evaluation
Center for Veterinary Medicine
Phone: (301) 827-5282
FAX: (301) 827-2298

RESPONSIBILITIES:

A. FDA agrees to:

1. Inform sponsors of new antimicrobial animal drugs that the AMS laboratory is capable of evaluating the effects of those drugs on the FSIS detection tests, and that AMS's role is limited to its evaluation of the effects of new antimicrobial drugs on FSIS detection tests.

2. Inform sponsors of AMS's requirement for:
   a. drug free tissues for control and fortification purposes;
   b. tissues that contain the incurred drug;
   c. sufficient chemically characterized drug standard of the same grade as that used in the manufacture of the drug article; and
   d. the following information about the drug product: chemical name, trade name, active ingredients, dosage form, dose(s) for use in the animal, manufacturing site, lot number or batch number if relevant, drug storage information, packaging information, storage stability and conditions affecting stability, and material safety data sheets.

3. Consider AMS's expertise in evaluating the effects of new antimicrobial animal drugs on FSIS detection tests.

4. If requested by the sponsor, review and comment on the tissues and drug levels proposed to be tested.

B. AMS agrees to:

1. Provide an analytical laboratory capable of performing the analysis specified in the FDA/FSIS protocol *"Determination of the Reactivity of New Animal Drugs in FSIS Antimicrobial Detection Tests"* and described in the *Microbiology Laboratory Guidebook (MLG) 3rd edition*, 1998, Chapter 33, Sections 33.26-33.27; 33.36-33.363; 33.55-33.57; and Chapter 34.

2. Conform its basic protocol outline for testing to the specifications in the FDA/FSIS protocol *"Determination of the Reactivity of New Animal Drugs in FSIS Antimicrobial Detection Tests."*

3. Send the final report of its analytical work to the drug's sponsor.

4. Include in its final report to the drug sponsor the following information:
   a. drug concentrations tested;
   b. buffers used for testing;
   c. tissues tested, specific controls, and fortified and incurred samples;
   d. tissue preparation or extraction procedure;
   e. screening tests used; and
   f. screening test and 7-plate bioassay results for buffer, fortified, and incurred samples, organized by tissue and screening test.

5. Communicate directly with sponsors in regard to the testing of the sponsors' drugs and refer other communications regarding the drug approval process to FDA.

C. It is mutually agreed that:

1. This MOU provides sponsors with one means of evaluating the effects of new antimicrobial animal drugs on the FSIS detection tests, and sponsors retain their discretion in providing this requested information.

2. FDA is not bound by any positions AMS may take as a result of its analysis of a new animal drug pursuant to this MOU. FDA will consider the information provided by AMS as specified in this MOU, but its decisions are independent.

3. Except as otherwise required by law, AMS is not bound by any positions FDA may take as a result of FDA's evaluation of a new animal drug.

4. FDA and AMS will continue to cooperate on improvement of testing protocols as necessary.

BASIS OF COOPERATION/FUNDING:

This MOU defines in general terms the basis on which the parties concerned will cooperate, and does not constitute a financial obligation to serve as a basis for expenditures. Each party will handle and expend its own funds.

Any and all expenditures from Federal funds in the Department of Agriculture made in conformity with the plans outlined in the MOU must be in accord with Department rules and regulations and in each instance based upon appropriate finance papers. Expenditures made by any other cooperator will be in accord with its rules and regulations.

The responsibilities assumed by the cooperating parties under this Memorandum of Understanding are contingent upon funds being available from which expenditures legally may be met.

DURATION:

This agreement shall continue in force indefinitely. It may be amended or terminated by mutual consent of the parties in writing. It may be terminated by either party upon 30 days' notice in writing to the other party.

This agreement is hereby approved for the Agricultural Marketing Service.
On 11/23/03
(Date)

Kenneth C. Clayton
Associate Administrator
Agricultural Marketing Service

This agreement is hereby approved for the Food and Drug Administration.
On 11/13/03
(Date)

Stephen Sundlof, D.V.M., Ph.D.
Director
Center for Veterinary Medicine
Food and Drug Administration

[FR Doc. 03–30027 Filed 12–2–03; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–02–8000]

Memorandum of Understanding Between the Food and Drug Administration and Johns Hopkins University

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a Memorandum of Understanding (MOU) between FDA and Johns Hopkins University. The purpose of the MOU is to develop collaboration in the areas of education, research, and outreach.

DATES: The agreement became effective April 30, 2002.

FOR FURTHER INFORMATION CONTACT: Peter Pitts, Office of External Relations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3330.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108 (c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: November 24, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

225-02-8000

MEMORANDUM OF UNDERSTANDING
Between the

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
FOOD AND DRUG ADMINISTRATION
ROCKVILLE, MARYLAND

And

JOHNS HOPKINS UNIVERSITY
BALTIMORE, MARYLAND

This Memorandum of Understanding between the **U.S. Food and Drug Administration** and **Johns Hopkins University** is established to develop collaboration between the two parties in the areas of education, research, and outreach.

I. PURPOSE

The purpose of this **Memorandum of Understanding (MOU)** is to establish the framework for a collaborative partnership on mutually agreed activities in the scientific research and education.

II. OBJECTIVE

The objectives of this collaborative partnership resulting from this **MOU** include:

1. development of a collaborative working relationship between **U.S. Food and Drug Administration** and **Johns Hopkins University**,
2. provision of exchange of graduate and undergraduate students, faculty, and personnel, for the purposes of advanced training and outreach,
3. stimulation of cooperative activities, research, and information exchange in areas such as bioethics,
4. development of training programs for **U.S. Food and Drug Administration** and potentially other Government agencies and Industry in the broad areas of biotechnology and bioethics.

III. PROGRAM FOCUS

The **Memorandum of Understanding** is intended as a broad vehicle to promote programmatic interaction in the form of joint collaboration between **U.S. Food and Drug Administration** and **Johns Hopkins University** researchers, students, and personnel as well as joint development of relevant projects.

The collaboration may include the following:

Joint exchange programs. These exchanges would include internships, research opportunities, and shadowing opportunities for **Johns Hopkins University** undergraduate, post-baccalaureate and graduate students at the **U.S. Food and Drug Administration.** Faculty and senior staff from **U.S. Food and Drug Administration** and **Johns Hopkins University** and other partners will be encouraged to participate in the work of the sister institutions for mutual research and training interactions to possibly include short or long-term exchanges of staff (e.g. sabbaticals).

Joint research programs. Joint research programs will be formed by scientists from the respective institutions with mutual complementary interests in certain areas such as bioethics.

Joint training activities. Training activities arising from complementary interests will be developed by **Johns Hopkins University** and offered to **U.S. Food and Drug Administration,** industry, and others as identified needs arise.

Joint dissemination of information and outreach. The partners will disseminate information and enhance the visibility of the work of the collaboration through mutually agreed vehicles including training activities, meetings, and symposia.

IV. PARTICIPANTS

A wide range of faculty including representatives from the Schools of Arts and Sciences, Engineering, Medicine, Nursing, and Hygiene and Public Health and their respective departments would be potential participants from **Johns Hopkins University**. Senior Scientists from the Commissioners Office, Centers and Offices of **U.S. Food and Drug Administration** would be participants from the **U.S. Food and Drug Administration**. Other participants could include representatives from industry, field laboratories and others identified for joint training and outreach activities.

V. ORGANIZATION TO IMPLEMENT MOU

An organization will be formed to implement this **MOU** that will include representation from the **U.S. Food and Drug Administration's** Office of the Commissioner, **Johns Hopkins University** Provost's Office and other interested parties. The organization will operate under terms agreed to by the Parties.

VI. RESOURCE OBLIGATIONS

This **MOU** describes in general terms the basis upon which the Parties intend to cooperate in these activities. It does not create binding, enforceable obligations against any Party. All activities undertaken pursuant to the **MOU** are subject to the availability of personnel, resources, and appropriated funds.

VII. OTHER AGREEMENTS OR ARRANGEMENTS

This **MOU** does not affect or supercede any existing or future agreements or arrangements among the Parties and does not affect the ability of the Parties to enter into other agreements or arrangements related to this **MOU**.

VIII. NAMES AND ADDRESSES OF PARTICIPANT PARTIES

A. U.S. Food and Drug Administration
5600 Fishers Lane
Rockville, Maryland 20857

B. Johns Hopkins University
3400 North Charles Street
Baltimore, Maryland 21218

IX. LIASON OFFICERS

A. Liaison Office for FDA
The Office of the Commissioner

B. Liaison Office for Johns Hopkins
Office of the Vice Provost for Research

X. DURATION OF MOU

This **MOU** shall become effective upon the signature or all the Parties and will continue in effect for five (5) years. It may be extended by mutual written agreement of the Parties in writing. It may be modified by mutual consent or terminated by either Party upon a 30-day advance notice to the other Party.

XI. REGULATIONS

This **MOU** and all associated agreements will be subject to the applicable federal and state laws and regulations.

JOHNS HOPKINS UNIVERSITY

BY Wm R Brody

WILLIAM R. BRODY Ph.D.
PRESIDENT OF THE JOHNS HOPKINS UNIVERSITY

DATE

FOOD AND DRUG ADMINISTRATION

BY Lester M Crawford

LESTER M. CRAWFORD DVM, Ph.D.
DEPUTY COMMISSIONER FOOD AND DRUG ADMINISTRATION

DATE April 30, 2002

[FR Doc. 03–30026 Filed 12–2–03; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. Chapter 35), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Data System for Organ Procurement and Transplantation Network (42 CFR Part 121, OMB No. 0915–0184): Extension

The operation of the Organ Procurement and Transplantation Network (OPTN) necessitates certain record keeping and reporting requirements in order to perform the functions related to organ transplantation under contract to HHS. This is a request for an extension of the current record keeping and reporting requirements associated with the OPTN. These data will be used by HRSA in monitoring the contracts for the OPTN and the Scientific Registry of Transplant Recipients (SRTR) and in carrying out other statutory responsibilities. Information is needed to match donor organs with recipients, to monitor compliance of member organizations with OPTN rules and requirements, and to ensure that all qualified entities are accepted for membership in the OPTN.

ESTIMATED ANNUAL REPORTING AND RECORD KEEPING BURDEN

Section and activity	Number of respondents	Responses per respondents	Total responses	Hours per response	Total burden hours
121.3(b)(2):					
OPTN membership and application requirements for OPOs, hospitals, and histocompatibility laboratories	30	1	30	40	1,200
121.3(b)(4):					
Appeal for OPTN membership	2	1	2	3	6
121.6(c) (Reporting):					
Submitting criteria for organ acceptance	900	1	900	0.5	450
121.6(c) (Disclosure):					
Sending criteria to OPOs	900	1	900	0.5	450
121.7(b)(4):					
Reasons for Refusal	900	38	34,200	0.5	17,100
121.7(e):					
Transplant to prevent organ wastage	278	1.5	417	0.5	209
121.9(b):					
Designated Transplant Program Requirements	10	1	10	5.0	50
121.9(d):					
Appeal for designation	2	1	2	6	12
Total	944		36,461		19,477

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 24, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–30030 Filed 12–2–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Contract Proposal.

Date: December 16, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anne P. Clark, PhD, Chief, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Rockledge II, Room 7214, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, (301) 435–0270.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 26, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30119 Filed 12–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Analgesia.

Date: December 1, 2003.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Alkaline Phosphatase.

Date: December 2, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892, 301–435–1021, *duperes@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pain.

Date: December 2, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–C (03) Reviews in Child Psychopathology.

Date: December 4, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED; Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0902, *krausem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–5 03 M: Dermatalogy/Rheumatology.

Date: December 10, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeffrey E. DeClue, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7814, MSC 7814, Bethesda, MD 20892, 301–594–6376.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, NeuroAIDS Member Conflicts.

Date: December 12, 2003.

Time: 11 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7852, Bethesda, MD 20892, 301–435–1168, *montalve@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Replicative Cellular Senescence.

Date: December 12, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892, 301–435–1021, *duperes@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, At Risk Youth.

Date: December 15, 2003.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Deborah L. Young-Human, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 451–8008, *younghyd@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Receptor Structure and Function.

Date: December 15, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Galectin Biology.

Date: December 17, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 NNB (03) Methylphendate and Development.

Date: December 19, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, *richard.marcus@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93–837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 25, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30117 Filed 12–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Neurophysiology, Neuroprosthetics, and Monitoring Devices.

Date: December 1, 2003.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Iron Transport.

Date: December 2, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Timothy J Henry, PhD, Scientific Review Administrator, BM–1 Study Section, IDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 3212, MSC 7808, Bethesda, MD 20892, (301) 435–1147, *henryt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CVS F (M): Cardiovascular Remodeling.

Date: December 3, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–ALTX–4 (03) Special Emphasis Panel.

Date: December 8, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: to review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rass M. Shayiq, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–435–2359, *shaytiqr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Stress.

Date: December 8, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255, *kenshalod@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Redox Enzyme Interactions.

Date: December 10, 2003

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, BM–1 Study Section, IDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 3212, MSC 7808, Bethesda, MD 20892, (301) 435–1147, *henryt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immune Response.

Date: December 11, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, BM–1 Study Section, IDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 3212, MSC 7808, Bethesda, MD 20892, (301) 435–1147, *henryt@csr.mih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 NNB (02) (M) Viscerosensory Pathways to Brain.

Date: December 15, 2003.

Time: 2:30 p.m. to 4: p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, *richard.marcus@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93–846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 26, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30118 Filed 12–02–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program: Announcement of a Public Meeting To Receive Comment on the NTP Vision and Input to a Roadmap for Implementation of the Vision

Summary

The National Toxicology Program (NTP) announces a public meeting to provide all interested parties an opportunity to express their views about the NTP Vision, provide input to a roadmap for implementation of the NTP Vision and comment on the views expressed by others. The NTP Vision for the 21st Century is to move toxicology from a predominately observational science at the level of disease-specific models to a predominately predictive science focused upon a broad inclusion of target-specific, mechanism-based, biological observations. The stimulus for the NTP Vision is to develop a framework that will promote the further advancement of toxicology and refine its traditional role as a predominately observational science.

The meeting will be held on January 29, 2004, at the Lister Hill Center Auditorium (Building 38A), National Library of Medicine, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland, 20892. The meeting will begin at 9 a.m. on January 29 and will conclude by 5 p.m. or sooner if the public comments and discussion end earlier. On-site registration will begin at 8:30 a.m. on January 29. Attendance at the meeting is limited only by the space available. Additional details about the meeting, including background information, agenda, written comments, registration and security information are provided below and are also available from the

NTP Web site (*http://ntp-server.niehs.nih.gov select* NTP Vision Public Meeting under What's New?).

Background

The National Toxicology Program (NTP) was established in 1978 to coordinate toxicological testing programs within the Department of Health and Human Services, develop and validate improved testing methods, develop approaches and generate data to strengthen scientific knowledge about potentially hazardous substances and communicate with stakeholders. In its 25 years of existence, NTP has become a world leader in providing scientific information that improves our nation's ability to evaluate potential human health effects from chemical and physical exposures. The NTP has maintained a number of complex, interrelated research and testing programs that provide unique and critical information needed by health regulatory and research agencies to protect public health.

The last decade of the 20th century and the turn of the 21st century have produced dramatic technological advances in molecular biology and computer science. The NTP is ready to evaluate its key activities and, in a focused and concerted effort, determine how best to incorporate these new scientific technologies into its research and testing strategies and broaden scientific knowledge on the linkage between mechanism and disease. The NTP Vision is to move toxicology from a predominately observational science at the level of disease-specific models to a predominately predictive science focused upon a broad inclusion of target-specific, mechanism-based, biological observations. Over the next year, the NTP intends to develop a roadmap for implementation of its vision that will strategically position the program at the forefront for providing scientific data and the interpretation of those data for public health decision-making. The NTP will seek input to this roadmap from numerous groups, including its federal partners, its advisory committees, and the public. Additional information about the NTP Vision is available on its Web site *(http://ntp-server.niehs.nih.gov select* NTP Vision Public Meeting under What's New?).

Agenda

A panel that includes NTP staff and representatives of the NTP Board of Scientific Counselors and the NTP Executive Committee will receive the public comments and participate in the discussion.

Tentative Agenda

NTP Vision Public Meeting

Lister Hill Center Auditorium, National Library of Medicine, National Institutes of Health, Bethesda, Maryland.

January 29, 2004

8:30 a.m. Registration.
9 a.m. Welcome and Introductions; Presentation of the NTP Vision; and Guidelines and procedures for oral comments and discussion.
10 a.m. Public comments (10 minutes per speaker, one speaker per organization).
5 p.m. Adjournment (The meeting may adjourn earlier if the public comments and discussion are finished.)

Public Comment Encouraged

The NTP invites all interested parties to present oral comments to the panel at the meeting. For planning purposes, individuals/groups wishing to give oral comment are asked to register early and provide appropriate contact information (name; affiliation; mailing address; phone; fax; e-mail; and sponsoring organization, if any). One time slot for an oral presentation will be allotted per organization. Speakers that register early for this meeting will be assigned time on a first-come, first-served basis. Registration to speak at this meeting will also be accepted on-site. It is anticipated that at least 10 minutes will be available for each presenter to address the panel. When oral comments are read from printed text, the NTP asks that the speaker provide 20 copies of the text at registration for distribution to the panel and to supplement the record of the meeting. Written statements can supplement or may expand on an oral presentation or can be submitted in lieu of an oral presentation.

The NTP also invites the submission of written comment. Written comments should be sent to the address provided below and include contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, if any). Comments received by January 15, 2004, will be distributed to the panel, posted on the NTP Web site prior to the meeting, and made available at the public meeting.

Registration for Meeting

This meeting is open to the public and all interested parties are invited to attend. Persons needing special assistance in order to attend are asked to contact Ms. Nan Cushing (contact information below) at least seven business days prior to the meeting. For planning purposes, persons are asked to register on-line or, if this is not possible, contact Ms. Nan Cushing (NTP Liaison and Scientific Review Office, NIEHS, P.O. Box 12233 MD A3–01, 111 T.W. Alexander Drive, Room 3123, Research Triangle Park, NC 27709; phone: (919) 541–0530; FAX: (919) 541–0295; e-mail: *cushing1@niehs.nih.gov*).

Access to the electronic registration form is available from the NTP Web site (*http://ntp-server.niehs.nih.gov*, select NTP Vision Public Meeting under ''What's New?''). Please complete the form and also indicate whether you want to request time for an oral presentation. On-site registration will also be available and will begin the morning of January 29 at 8:30 a.m.

Access to the NIH Campus

Any individual seeking access to the NIH campus to attend this meeting will need to be prepared to show two forms of identification—a government-issued photo ID (*e.g.*, Federal employee badge, driver's license, passport or green card, etc.) along with another type of identification, and, if asked, to provide pertinent information about this meeting (*e.g.*, a copy of the meeting announcement, title of the meeting, or meeting host). Additional information about access to the NIH campus and parking is available from the NTP Web site (*http://ntp-server.niehs.nih.gov*, select NTP Vision Public Meeting under ''What's New?'').

Dated: November 20, 2003.

Kenneth Olden,

Director, NTP.

[FR Doc. 03–30121 Filed 12–2–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program: Announcement of a Public Meeting To Discuss the Review Process and the Listing/Delisting Criteria Used for the Report on Carcinogens

Summary

The National Toxicology Program (NTP) announces a public meeting to receive public comment on the current process for reviewing nominations for listing in or delisting from the Report on Carcinogens (RoC) and on the current listing criteria used for evaluating the nominations. The purpose of this public meeting is to obtain input and provide all interested parties an opportunity to express their views about the review process for nominations to the RoC and/

or the evaluation criteria and to comment on the views expressed by others.

The meeting will be held on January 27–28, 2004, at the Lister Hill Center Auditorium (Building 38A), National Library of Medicine, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland, 20892. The meeting will begin at 9 am on January 27 and will conclude by noon on January 28 or sooner if the public comments and discussion end earlier. On-site registration will begin at 8:30 am on January 27. Attendance at the meeting is limited only by the space available. Additional details about the meeting, including background information, agenda, written comments, registration and security information are provided below and are also available from the NTP Web site (*http://ntp-server.niehs.nih.gov* select NTP/RoC Public Meeting under What's New?).

Background

The RoC is a public information document prepared by the NTP, pursuant to delegation from the Secretary of The Department of Health and Human Services (DHHS) as required by Section 301(b)(4) of the Public Health Service Act, as amended. The RoC provides a listing of those agents, substances or exposure circumstances which are either ''known'' or ''reasonably anticipated'' to cause cancer in humans, and to which a significant number of people in the United States are exposed. The 1st edition of the report (then known as the Annual Report on Carcinogens) was published in 1980. Similar criteria and review processes were used to consider/evaluate nominated substances for listing in the 1st through 7th editions; the 7th edition was published in 1994. In 1995, a panel whose membership included persons from academia, industry, labor, public/environmental organizations, state and local health departments and government met in public session(s) to examine the criteria. The panel recommended revisions to the listing criteria and the nomination review process for the RoC. The Secretary, DHHS approved the revised criteria on September 12, 1996 [61 FR 50499, September 26, 1996]. The revised criteria and review process were used to evaluate nominations to the 8th, 9th, and 10th editions of the RoC and are currently being used to evaluate nominations being considered for listing in or delisting from the 11th edition. A description of the proposed review process that will be used to evaluate nominations to future editions of the RoC and the listing/delisting criteria are provided below and can also be found on the NTP Web site (*http://ntp-server.niehs.nih.gov/NewHomeRoc/AboutRoC.html*).

Agenda

A panel that includes NTP staff and representatives of the NTP Board of Scientific Counselors RoC Subcommittee, the NTP Executive Committee Interagency Working Group for the RoC and the NIEHS/NTP RoC Review Committee will receive the public comments and participate in the discussion.

Tentative Agenda

NTP/RoC Public Meeting

Lister Hill Center Auditorium, National Library of Medicine, National Institutes of Health, Bethesda, Maryland.

January 27, 2004

8:30 a.m. Registration.
9 a.m. Welcome and Introductions; Overview of the history of the Report on Carcinogens, the proposed review process for nominations and the listing/delisting criteria; and Guidelines and procedures for oral comments and discussion.
10 a.m. Public comments (10 minutes per speaker, one speaker per organization).
5 p.m. Adjournment (The meeting may adjourn earlier if the public comments and discussion are finished.).

January 28, 2004

9 a.m. Continuation of public comments and discussion if not finished on January 27.
Noon Close of meeting (The meeting may close earlier if the public comments and discussion are finished.)

Public Comment Encouraged

The NTP welcomes continued and meaningful input from all stakeholders concerning the RoC review process and the evaluation criteria used to list/delist nominations. The NTP invites all interested parties to present oral comments to the panel at the meeting. For planning purposes, individuals/groups wishing to give oral comment are asked to register early and provide appropriate contact information (name; affiliation; mailing address; phone; fax; e-mail; and sponsoring organization, if any). One time slot for an oral presentation will be allotted per organization. Speakers that register early for this meeting will be assigned time on a first-come, first-served basis. Registration to speak at this meeting will also be accepted on-site. It is anticipated that at least 10 minutes will be available for each presenter to address the panel. When oral comments are read from printed text, the NTP asks that the speaker provide 15 copies of the text at registration for distribution to the panel and to supplement the record of the meeting. Written statements can supplement or may expand on an oral presentation or can be submitted in lieu of an oral presentation.

The NTP also invites the submission of written comment. Written comments should be sent to the address provided below and include contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, if any). Comments received by January 15, 2004, will be distributed to the panel, posted on the NTP RoC Web site prior to the meeting, and made available at the public meeting.

Registration for Meeting

This meeting is open to the public and all interested parties are invited to attend. Persons needing special assistance in order to attend are asked to contact Ms. Anna Lee Sabella (contact information below) at least seven business days prior to the meeting. For planning purposes, persons are asked to register on-line or, if this is not possible, contact Ms. Anna Lee Sabella (Report on Carcinogens Group, NIEHS, P.O. Box 12233 MD EC–14, 79 T.W. Alexander Drive, Room 3123, Research Triangle Park, NC 27709; phone: (919) 541–4982; FAX: (919) 541–0144; e-mail: *sabella@niehs.nih.gov*).

Access to the electronic registration form is available from the NTP Web site (*http://ntp-server.niehs.nih.gov*, select NTP/RoC Public Meeting under ''What's New?''). Please complete the form and also indicate whether you want to request time for an oral presentation. On-site registration will also be available and will begin the morning of January 27 at 8:30 am.

Access to the NIH Campus

Any individual seeking access to the NIH campus to attend this meeting will need to be prepared to show two forms of identification (one must be a government-issued photo ID, *e.g.*, driver's license, passport, green card, etc.) and, if asked, to provide pertinent information about this meeting (*e.g.*, a copy of the meeting announcement, title of the meeting). Additional information about access to the NIH campus and parking is available from the NTP Web site (*http://ntp-server.niehs.nih.gov*,

select NTP/RoC Public Meeting under ''What's New?'').

Dated: November 20, 2003.

Kenneth Olden,

Director, NTP.

Report on Carcinogens

Proposed Listing/Delisting Procedures

Nominations for listing or delisting (removing) an agent, substance, mixture, or exposure circumstance in the RoC should be submitted to the NTP [1] (footnotes are defined). Nominations must contain a rationale for listing or delisting as either a ''known human carcinogen'' or a ''reasonably anticipated human carcinogen.'' Appropriate background information and relevant data (*e.g.*, journal articles, NTP Technical Reports, IARC listings, exposure surveys, release inventories, etc.) that support the nomination should be provided or referenced when possible.

A nomination for listing or delisting in the RoC is evaluated initially by the NIEHS/NTP RoC nomination review committee, composed of scientists from the NIEHS/NTP staff, to determine if the information available for a nomination indicates the criteria for listing can be applied and warrants formal consideration by the NTP. This committee is provided with the information submitted with each nomination and any relevant supplemental materials identified by RoC staff. The committee reviews the information provided for each nomination and makes a recommendation for either continuing with the formal review for listing or delisting or not pursuing the nomination at this time. The rationale for dropping a nomination would be the lack of sufficient information for applying the listing criteria or, in the case of nominations for delisting, the absence of significant new information published since the original listing. The recommendations of this committee are submitted to the Director, NTP for approval. Those nominations not accepted for review will be returned to the original nominator who is invited to resubmit the nomination with additional justification, which may include new data, exposure information, etc. The NTP Executive Committee [2] and the NTP Board of Scientific Counselors are informed of all nominations not accepted for review for listing or delisting in the RoC.

The NTP announces its intent to review and solicits public comments on all nominations accepted for review through announcements in the **Federal Register** and NTP publications. The NTP will initiate an independent search and review of the literature and prepare a background document for each nomination under consideration. The comments received in response to the public announcement are used to help identify issues that should be addressed in the background documents. The background documents are prepared with the assistance of an expert consultant(s) who have expertise and/or knowledge for the specific nomination. Background documents are prepared according to the following general format:

1. Introduction

Information contained in this section includes chemical identification such as synonyms, trade names, CAS Registry numbers, molecular formula, molecular structure, etc. Also included are physical-chemical properties and identification of structural analogs or metabolites.

2. Human Exposure

Information contained in this section can include use; production; analysis; environmental occurrence including environmental release, drinking water and food content and occurrence in consumer products; environmental fate in air, water, and soil; environmental and occupational exposures; biological indices of exposure; and regulations including occupational exposure limits and ''other'' standards and criteria.

3. Human Studies

Information contained in this section can include traditional cancer epidemiology investigations including case control and cohort studies as well as data from clinical studies.

4. Experimental Carcinogenesis

Information in this section can include experimental animal investigations of potential carcinogenesis including long term bioassays, experiments where the substance is administered in conjugation with known carcinogens or factors that modify carcinogenic effects, studies to investigate a defined precancerous lesion and experiments on the carcinogenicity of known metabolites and derivatives.

5. Genotoxicity

Information in this section can include investigations of genetic and related effects including gene mutation and chromosomal damage.

6. Other Data Relevant to Evaluation of Carcinogenicity and its Mechanisms

Information contained in this section can include metabolism, absorption, distribution and excretion of the substance, other toxic effects, and data derived from the study of tissues or cells from humans and/or experimental animals exposed to the substance in question, which can be useful for evaluating whether a relevant cancer mechanism is operating in people.

Data used in the preparation of Sections 3 through 6 of the background document must come from publicly available, peer-reviewed sources.

The final draft of the background document for each nomination will be reviewed by the NIEHS/NTP RoC Review Committee (RG1) that is composed of senior scientists from the NIEHS/NTP staff. The RG1 is asked to review the background document for content and determine if it is adequate for use in reviewing the nomination and applying the criteria for listing in the RoC. Upon determination of adequacy, the background document is considered the final document of record and is placed on the NTP RoC Web site. A notice is then published on the NTP list-server and the NTP Web site announcing the availability of the background document for a nomination. Notification of the availability of background documents by mail can also be requested by contacting the NTP.[3] The formal review of a nomination will not begin for at least 45 day after the announcement of the availability of the background document for that nomination. All comments received within this time period will be distributed to the RoC review committees and also become part of the public record.

Formal Review Steps

Nominations under consideration by the NTP for listing in or delisting from the RoC undergo a multi-step, scientific review process that includes several opportunities for public comment. The following text briefly describes that process.

NIEHS/NTP RoC Review Committee (RG1)

The RG1 conducts a formal review of nominations for listing in or delisting from the RoC. The RG1 reviews the background document for each nomination and all public comments received in response to the **Federal Register** announcement of the intent to

[1] /SU≤National Toxicology Program, Report on Carcinogens, P.O. Box 12233, 79 T.W. Alexander Drive, Bldg. 4401, Room 3118, MD EC–14, Research Triangle Park, NC 27709; *contact information:* Dr. C. W. Jameson, phone (919) 541–4096, fax: (191) 541–0144, e-mail: *jameson@niehs.nih.gov*

[2] Agencies represented on the NTP Executive Committee include: Agency for Toxic Substances and Disease Registry (ATSDR), Consumer Product Safety Commission (CPSC), Environmental Protection Agency (EPA), Food and Drug Administration (FDA), National Center for Environmental Health of the Centers for Disease Control and Prevention (NCEH/CDC), National Institute for Occupational Safety and Health/CDC (NIOSH/CDC), Occupational Safety and Health Administration (OSHA), National Cancer Institute of the National Institutes of Health (NCI/NIH), and National Institute of Environmental Health Sciences/NIH(NIEHS/NIH)

[3] Contact information provided in footnote 1.

review a nomination and any comments received on the background document. The RG1 conducts a scientific review of the nomination applying the criteria and provides comments and makes its recommendations to the Director, NTP for listing or delisting it in the RoC.

NTP Executive Committee's Interagency Working Group for the RoC (RG2)

The RG2, a federal government interagency scientific review group, also conducts a scientific review of nominations to the RoC. The RG2 assesses whether relevant information for a nomination is available and sufficient for listing in or delisting from the RoC. The RG2 reviews the original nomination and all public comments received in response to the **Federal Register** announcement of the intent to review a nomination and any comments received on the background document. Upon completion of its review, the RG2 provides comments and makes its recommendations to the Director, NTP for listing or delisting the nominations in the RoC.

Board of Scientific Counselors RoC Subcommittee (External Peer Review)

The third step in the review process is external scientific peer review of the nominations by a standing subcommittee of the NTP Board of Scientific Counselors (''the RoC Subcommittee''). The RoC Subcommittee serves as an independent peer review group that assesses whether the relevant information available for a nomination is sufficient for listing or delisting it in the RoC. The RoC Subcommittee reviews nominations in an open public meeting. Prior to this public review, a notice is published in the **Federal Register** and NTP publications announcing the public meeting, a reminder of the availability of the background documents and soliciting public comment on the nominations. The notice invites interested groups or individuals to submit written comments and/or address the RoC Subcommittee during the public review meeting. The RoC Subcommittee reviews the original nomination and all public comments received in response to the **Federal Register** notices including the announcement of the intent to review a nomination and the announcement of the public meeting, any comments received on the background documents, and comments received at the public meeting. Upon completion of its review, the RoC Subcommittee provides comments and makes its recommendations for listing or delisting the nominations in the RoC.

Final Public Comment

Upon completion of the reviews by RG1, RG2 and the RoC Subcommittee, the NTP publishes in the **Federal Register** and NTP publications the nominations and the review groups' recommendations for each (to list, to delist, or not to list in the RoC), and solicits final public comment and input on the nominations.

NTP Executive Committee

The recommendations of RG1, RG2 and the RoC Subcommittee and all public comments received in response to all **Federal Register** announcements and the background documents are presented to the NTP Executive Committee for review and comment. The NTP Executive Committee reviews the information on the nominations and provides the Director, NTP its recommendations for listing or delisting them in the RoC.

NTP Director

The NTP Director receives the independent recommendations for the nominations from RG1, RG2 and the NTP Board RoC Subcommittee, the recommendation of the NTP Executive Committee and all public comments received concerning the nominations. The NTP Director evaluates this input and any other relevant information on the nominations and develops recommendations to the Secretary, Department of Health and Human Services (DHHS) regarding whether to list, delist, or not list the nominations in the RoC.

Secretary, Department of Health and Human Services

The NTP prepares a final draft of the RoC based on the NTP Director's recommendations and submits it to the Secretary, DHHS for review and approval. Upon approval of the RoC, the Secretary submits it to the U.S. Congress as a final document. The submission of the RoC to Congress constitutes publication of the report and it becomes available to the public at that time.

The NTP publishes a notice of the publication and availability of the latest edition of the RoC, indicating all newly listed or delisted agents, substances, mixtures or exposure circumstances in the **Federal Register** and NTP publications.

Report on Carcinogens

Criteria for Listing

Agents, Substances, Mixtures or Exposure Circumstances

Known To Be Human Carcinogen:

There is sufficient evidence of carcinogenicity from studies in humans, which indicates a causal relationship between exposure to the agent, substance, or mixture, and human cancer.

Reasonably Anticipated To Be Human Carcinogen:

There is limited evidence of carcinogenicity from studies in humans, which indicates that causal interpretation is credible, but that alternative explanations, such as chance, bias, or confounding factors, could not adequately be excluded,

or

there is sufficient evidence of carcinogenicity from studies in experimental animals, which indicates there is an increased incidence of malignant and/or a combination of malignant and benign tumors (1) In multiple species or at multiple tissue sites, or (2) by multiple routes of exposure, or (3) to an unusual degree with regard to incidence, site, or type of tumor, or age at onset,

or

there is less than sufficient evidence of carcinogenicity in humans or laboratory animals; however, the agent, substance, or mixture belongs to a well-defined, structurally related class of substances whose members are listed in a previous Report on Carcinogens as either known to be a human carcinogen or reasonably anticipated to be a human carcinogen, or there is convincing relevant information that the agent acts through mechanisms indicating it would likely cause cancer in humans.

Conclusions regarding carcinogenicity in humans or experimental animals are based on scientific judgment, with consideration given to all relevant information. Relevant information includes, but is not limited to, dose response, route of exposure, chemical structure, metabolism, pharmacokinetics, sensitive sub-populations, genetic effects, or other data relating to mechanism of action or factors that may be unique to a given substance. For example, there may be substances for which there is evidence of carcinogenicity in laboratory animals, but there are compelling data indicating that the agent acts through mechanisms which do not operate in humans and would therefore not reasonably be anticipated to cause cancer in humans.

Clarification of Criteria

Some questions have arisen regarding information from studies involving humans and how this is applied to the listing of a substance determined to be a ''known human carcinogen''. The ''known human carcinogen'' category

requires evidence from studies of humans. This can include traditional cancer epidemiology studies, data from clinical studies, and/or data derived from the study of tissues from humans exposed to the substance in question and useful for evaluating whether a relevant cancer mechanism is operating in people.

There have also been some misunderstandings regarding the application of the final paragraph of the criteria which begins, ''Conclusions regarding carcinogenicity in humans or experimental animals* * *'' Since these criteria were first published on September 26, 1996 (61 FR 50499–50500), the paragraph has applied to both the ''known to be human carcinogen'' and the ''reasonably anticipated to be human carcinogen'' categories and will continue to apply (64 FR 19188, April 19, 1999).

[FR Doc. 03–30122 Filed 12–2–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors Technical Reports Review Subcommittee Meeting; Review of Draft NTP Technical Reports

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee (''the Subcommittee'') on February 17–18, 2004, in the Rodbell Auditorium, Rall Building at the National Institute of Environmental Health Sciences, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709. The meeting will begin at 8:30 a.m.

Agenda

The primary agenda topic is the peer review of seven draft NTP Technical Reports of rodent toxicology and carcinogenesis studies conducted by the NTP. This includes the re-review of the NTP Draft Technical Report on Anthraquinone (TR #494), which was originally reviewed in May 1999. The reports are listed in the table below in the tentative order of their review.

The agenda and roster of the Subcommittee members will be available prior to the meeting on the NTP homepage at *http://ntp-server.niehs.nih.gov/(see* What's New?) and upon request to the NTP Executive Secretary, Dr. Barbara S. Shane (P.O. Box 12233, 111 T.W. Alexander Dr., MD A3–01, Research Triangle Park, NC 27709, T: 919–541–4253; F: 919–541–0295; e-mail: *shane@niehs.nih.gov*). Following the meeting, summary minutes will be available on the NTP web site and in hard copy upon request to the Executive Secretary. Plans are underway for making this meeting available for viewing on the Internet at (*http://www.niehs.nih.gov/external/video.htm*).

The NTP Board of Scientific Counselors Technical Reports Review Subcommittee meeting is open to the public. Attendance at this meeting is limited only by the space available. For planning purposes, individuals who plan to attend are asked to register with the NTP Executive Secretary (see contact information above). Registration will also be available on-site at the meeting. Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, are asked to notify the NTP Executive Secretary at least seven business days in advance of the meeting (see contact information above).

Draft Reports Available for Public Review and Comment

Approximately seven weeks prior to the meeting, the draft reports will be available for public review, free of charge, through ehpOnline (*http://ehp.niehs.nih.gov/*). Printed copies of the Draft NTP Technical Reports can be obtained, as available, from Central Data Management (NIEHS, P.O. Box 12233, MD EC–03, Research Triangle Park, NC 27709, T: 919–541–3419, F: 919–541–3687, e-mail: *CDM@niehs.nih.gov*).

Comments on any of the Draft NTP Technical Reports are welcome. Time will be provided at the meeting for oral public comment on the reports. Persons requesting time for an oral presentation on a particular report are asked to notify the Executive Secretary (contact information given above) by January 30, 2004, and to provide their contact information (name, affiliation, mailing address, phone, fax, e-mail), and supporting organization (if any). Persons registering to make comments are asked to provide a written copy of their statement to the Executive Secretary on or before January 30, 2004, to enable review by the Subcommittee and NTP staff prior to the meeting. These statements can supplement or expand an oral presentation. Each speaker will be allotted at least 7 minutes and, if time permits, up 10 minutes for presentation of oral comments. Each organization is allowed one time slot per report being reviewed. Registration for making public comments will also be available on-site. If registering on-site to speak and reading comments from printed text, the speaker is asked to provide 25 copies of the statement for distribution to the Subcommittee and NTP staff, and to supplement the record.

Written comments without an oral presentation at the meeting are also welcome. Comments should include contact information for the submitter (name, affiliation, mailing address, phone, fax, and e-mail) and supporting organization (if any). Written comments should be received by the Executive Secretary on or before January 30, 2004, to enable distribution to the Subcommittee and NTP staff for their review and consideration prior to the meeting.

Request for Additional Information

The NTP would welcome receiving toxicology and carcinogenesis information from completed, ongoing or planned studies as well as current production data, human exposure information, and use patterns for any of the chemicals listed in this announcement. Please send this information to Central Data Management at the address given above and it will be forwarded to the appropriate NTP staff.

NTP Technical and Toxicity Report Series

The NTP conducts toxicology and carcinogenesis studies of agents of public health concern. Any scientist, organization, or member of the public may nominate a chemical for NTP testing. Details about the nomination process are available on the NTP Web site (*http://ntp-server.niehs.nih.gov/,* select How to Nominate Substances). The results of short-term rodent toxicology studies are published in the NTP Toxicity Report series. Longer-term studies, generally, rodent carcinogenicity studies, are published in the NTP Technical Report series. The NTP has a new technical report series for studies conducted in genetically modified models. Study abstracts for all reports are available at the NTP Web site under NTP Study Information. PDF files of completed reports are available free-of-charge from ehpOnline under Publications and hard copies of published reports can be obtained through subscription to ehpOnline (*http://ehp.niehs.nih.gov/* contact information: T: 919–653–2595 or 866–541–3841, e-mail: *ehponline@ehp.niehs.nih.gov*).

NTP Board of Scientific Counselors

The NTP Board of Scientific Counselors (''the Board'') is a technical

advisory body composed of scientists from the public and private sectors who provide primary scientific oversight and peer review to the NTP. Specifically, the Board advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and overall scientific quality.

The Technical Reports Review Subcommittee of the Board provides scientific peer review of the findings and conclusions of NTP Technical Reports. The Report on Carcinogens Subcommittee of the Board provides scientific peer review of nominations to the Report on Carcinogens, a Congressionally mandated listing of agents known or reasonably anticipated to be human carcinogens.

The Board's members are selected from recognized authorities knowledgeable in fields, such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology, neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. The NTP strives for equitable geographic distribution and for minority and female representation on the Board.

Dated: November 17, 2003.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

NATIONAL TOXICOLOGY PROGRAM (NTP) TECHNICAL REPORTS TENTATIVELY SCHEDULED FOR REVIEW BY THE NTP BOARD OF SCIENTIFIC COUNSELORS TECHNICAL REPORTS REVIEW SUBCOMMITTEE ON FEBRUARY 17–18, 2004 AT THE NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES, RESEARCH TRIANGLE PARK, NC

Chemical/CAS No.	Report No.	Primary uses	Route and exposure levels	Review order
2,3,7,8-Tetrachlorodibenzo-*p*-dioxin (TCDD)/1746–01–6.	TR 521	By-product of combustion and smelting.	Two-year study by inclusion in the diet at 3–100 ng/kg to female Sprague Dawley rats.	1
3,3′,4,4′,5-Pentachlorobiphenyl (PCB 126)/57465–28–8.	TR 520	Insulating fluid	Two-year study by inclusion in the diet at 10–100 ng/kg to female Sprague Dawley rats.	2
2,3,4,7,8–Pentachlorodibenzofuran (PeCDF)/57117–31–4.	TR 525	By-product of incineration and combustion.	Two-year study by inclusion in the diet at 3–100 ng/kg to female Sprague Dawley rats.	3
Mixture of PCB 126, TCDD, and PeCDF	TR 526	By-products of combustion, smelting and incineration.	Two-year study by inclusion in the diet at concentrations based on their toxic equivalency factors to female Sprague Dawley rats.	4
Malachite Green/569–64–2 and Leucomalachite Green/129–73–7.	TR 527	Dye and antifungal agent for fish.	Two-year study of Malachite Green by inclusion in the diet to female rats (100–600 ppm) and to male and female mice (100–450 ppm). Two-year study of Leucomalachite Green by inclusion in the diet to male and female rats (91 to 543 ppm) and to female mice (100–450 ppm).	5
Anthraquinone/84–65–1*	TR 494	Intermediate in dye synthesis	Two-year study by inclusion in the diet to male and female rats (469–3,750 ppm) and to male and female mice (833–7,500 ppm).	6
1. 1,2,3-Trichloropropane/96–18–4	TR 528	2. Paint and varnish Remover.	Exposure by aquarium water to Medaka and Guppy	7
2. 2,2,3–Bis(bromomethyl)-1,3-propanediol/3296–90–0.		3. Flame retardant.		
3. Nitromethane/75–52–5		3. Fuel additive, synthesis intermediate and solvent.		

*The draft NTP Technical Report on Anthraquinone was previously peer reviewed by the Subcommittee in May 1999. Subsequent to that peer review, the anthraquinone tested was found to contain a 0.1% contaminant. As a result, additional mutagenicity and metabolism studies were conducted and the findings from those studies are included in the revised draft report. The Subcommittee will evaluate the results from the follow-up studies, use that information to re-examine the carcinogenicity findings from the 2-year studies and make a recommendation on the carcinogenicity of anthraquinone.

[FR Doc. 03–30123 Filed 12–2–03; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Post-Delisting Monitoring Plan for the American Peregrine Falcon (*Falco peregrinus anatum*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the post-delisting monitoring plan for the American Peregrine Falcon (*Falco peregrinus anatum*). This plan is titled, ''Monitoring Plan for the American Peregrine Falcon, A Species Recovered Under the Endangered Species Act'' (Monitoring Plan). The American peregrine falcon was removed from the List of Endangered and Threatened Wildlife and Plants in August 1999 due to its recovery. The Endangered Species Act of 1973, as amended in 1988 (Act) (16 U.S.C. 1531 *et seq.*), requires that we implement a system, in cooperation with the States, to monitor effectively for at least 5 years, the status of all species that have recovered and no longer need the protection of the Act.

ADDRESSES: Copies of the Monitoring Plan are available by request from Michael Green, Migratory Birds and State Programs, U.S. Fish and Wildlife Service, 911 NE. 11th Ave, Portland, OR 97232. Requests may also be made via fax at 503–231–2019, or via telephone at 503–231–6164. This Monitoring Plan is also available on the World Wide Web at *http://migratorybirds.fws.gov* and *http://endangered.fws.gov/.*

FOR FURTHER INFORMATION CONTACT: Michael Green, Migratory Birds and State Programs, at the above address, at *michael_green@fws.gov,* or at 503–231–6164.

SUPPLEMENTARY INFORMATION:

Background

The American peregrine falcon occurs throughout much of North America, from the subarctic boreal forests of Alaska and Canada south to Mexico. American peregrine falcons nest from central Alaska, central Yukon Territory, and northern Alberta and Saskatchewan, east to the Maritime Provinces, and south (excluding coastal areas north of the Columbia River in Washington and British Columbia) throughout western Canada and the United States to Baja California, Sonora,

and the highlands of central Mexico. The American peregrine falcons that nest in subarctic areas generally winter in South America. Those that nest at lower latitudes exhibit variable migratory behavior; some do not migrate.

The American peregrine falcon declined precipitously in North America following World War II, a decline attributed largely to organochlorine pesticides, mainly DDT, applied in the United States, Canada, and Mexico. Because of the decline, the American peregrine falcon was listed as endangered on June 2, 1970, under the precursor of the Endangered Species Act (35 FR 16047). Recovery goals were substantially exceeded in some areas, and on August 25, 1999, the American peregrine falcon was removed from the List of Endangered and Threatened Wildlife and Plants (64 FR 46541). There are currently between 2,000 and 3,000 pairs breeding each year across the United States, Canada, and Mexico, and the population continues to increase.

Section 4(g)(1) of the Act requires that we monitor for not less than 5 years, in cooperation with States, the status of all species removed from the List of Endangered and Threatened Wildlife and Plants due to recovery. In keeping with that mandate, we have developed this Monitoring Plan to guide our ongoing monitoring efforts in cooperation with State resource agencies, recovery team members, independent scientists, biostatisticians, and other cooperators. A 30-day public comment period was opened on July 31, 2001 (66 FR 39523), and again on September 27, 2001 (66 FR 49395), and the Monitoring Plan received additional review by States, cooperators, and other private organizations and individuals in December 2002 and January 2003.

The Monitoring Plan is designed to monitor the status of the American peregrine falcon by detecting whether the number of occupied American peregrine falcon territories across the contiguous United States and Alaska is declining, and whether American peregrine falcons are experiencing a decrease in nesting success and productivity, which are indices of population health. The Monitoring Plan also includes a contaminant monitoring component. Data will be collected from a randomly selected subset of American peregrine falcon territories (494 across the nation) for five sampling periods, at three-year intervals starting in 2003 and ending in 2015. The 2003 monitoring effort is currently underway. We will publish a report on the results of the 2003 monitoring once the data are analyzed. This will be the first of our triennial reports. A Notice of Availability for the triennial and final reports will be published in the **Federal Register** and posted on the World Wide Web as outlined in the Monitoring Plan.

We will work cooperatively with the States, other agencies, and partners to collect this information. We will analyze the information after each monitoring effort and will propose adjustments to the sampling design, if necessary. The Monitoring Plan is designed to detect declines in the health of American peregrine falcon populations that might arise from a variety of threats including, but not limited to, environmental contaminants and diseases (such as West Nile Virus). If these data indicate that this species is experiencing significant decreases in territory occupancy, nest success, or productivity, we will initiate more intensive review or studies to determine the cause, or take action to re-list the American peregrine falcon under section 4 of the Act, if necessary.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in the Monitoring Plan have been approved by the Office of Management and Budget (OMB) under OMB control number 1018–0101, which expires March 31, 2005. 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.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended in 1988 (16 U.S.C. 1531 *et seq.*).

Dated: October 23, 2003.

Matt Hogan,

Acting Director, Fish and Wildlife Service.

[FR Doc. 03–30065 Filed 12–2–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–080–1030–PH]

Notice of Public Meeting, Upper Columbia-Salmon Clearwater Resource Advisory Council Meeting; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Upper Columbia-Salmon Clearwater (UCSC) District Resource Advisory Council (RAC) will meet as indicated below.

DATES: January 8 and 9, 2004. The meeting will begin at 8 a.m. each day and end at approximately 3 p.m. on January 9th. The public comment period will be from 8 a.m. to 9 a.m. on January 9, 2004. The meeting will be held at the Grant Creek Inn, 5280 Grant Creek Road, Missoula, Montana, because Missoula is centrally located for Council members traveling from the northern and south-central parts of Idaho.

FOR FURTHER INFORMATION CONTACT: Stephanie Snook, RAC Coordinator, BLM UCSC District, 1808 N. Third Street, Coeur d'Alene, Idaho 83814 or telephone (208) 769–5004.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The agenda items for the January 8 and 9, 2004, meeting include:

- RAC new member orientation;
- Rangeland Ecology training session;
- Development of an Annual Work Plan;
- Subgroup reports and follow-up on Off-Highway-Vehicles, the Wild Horse Program, and other natural resource issues.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council 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, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Dated: November 26, 2003.

Lewis M. Brown,

Acting District Manager.

[FR Doc. 03–30069 Filed 12–2–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–AE]

Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northeast California Resource Advisory Council, Susanville, California.

ACTION: Notice of meeting date and location change.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U. S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Thursday and Friday, Jan. 29 and 30, 2004, in the meeting room of the Cedarville Community Church, corner of Center and Bonner Streets in Cedarville, California. The meeting date and location are changed from an earlier announced date of Jan. 22 and 23, 2004 in the BLM Office, Cedarville.

SUPPLEMENTARY INFORMATION: The original meeting notice was published in the **Federal Register** on Nov. 20, 2003 (Volume 68, No. 224, Notices, page 65470). Agenda items remain unchanged from the original announcement, but the time for public comments has been moved to 11:15 a.m. on Friday, Jan. 30, 2004.

FOR FURTHER INFORMATION CONTACT: Tim Burke, BLM Alturas Field Manager, at (530) 233–4666, or Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 03–30070 Filed 12–2–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–912–04–1990–PP–241A–006F]

Sierra Front-Northwestern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting location and time for the Sierra Front-Northwestern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), a meeting of the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion at the meeting will include, but are not limited to: Manager's reports of current field office activities; Pine Nut Mountain RMP Amendment DEIS; review of Carson City & Winnemucca Field Offices criteria and initial project proposals for Round 5 of the Southern Nevada Public Lands Management Act; review of Mojave-Southern RAC's proposed Wild Horse & Burro Management Standards & Guidelines and modification to meet the needs of the Northwest Great Basin; review of proposed 2004–2005 Wild Horse Herd Management Area gathers in the Northwest Great Basin; discussion on differences and inconsistencies in field office consultation procedures under Section 106 of the National Historic Preservation Act; discussion of a Pershing County Land Bill; resource management update on the Truckee, Carson & Walker River systems, including, weather-permitting, a field trip to McCarran Ranch, Mustang Ranch, 102 Ranch & other flood control/restoration projects along the Truckee River, east of Reno/Sparks, Nevada; and additional topics the council may raise during the meeting.

DATES: The RAC will meet on Thursday, January 22, 2004, from 9 a.m. to 5 p.m., and Friday, January 23, 2004, from 8 a.m. to 3:30 p.m., at the BLM-Nevada State Office, Great Basin A&B Conference Room, 1340 Financial Blvd., Reno, Nevada. All meetings and field trips are open to the public. A general public comment period, where the public may submit oral or written comments to the RAC, will be held at 4 p.m. on January 22, 2004.

A final detailed agenda, with any additions/corrections to agenda topics, field trip stops and meeting times, will be available on the internet no later than January 8, 2004, at *www.nv.blm.gov/rac;* hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of the agenda, should contact Mark Struble, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6107, no later than January 12, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Struble, Public Affairs Officer, BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone: (775) 885–6107. E-mail: *mstruble@nv.blm.gov.*

Dated: November 26, 2003.

Elayn Briggs,

Acting Field Office Manager, BLM-Carson City Field Office.

[FR Doc. 03–30071 Filed 12–2–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500–0777–XM–241A]

Notice of Amendment of Meeting Date, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on January 14, 2004, at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado beginning at 9:15 a.m. The public comment period will begin at approximately 9:30 a.m. and the meeting will adjourn at approximately 4 p.m.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Front Range Center, Colorado. Planned agenda topics include Manager updates on current land management issues and a presentation on Colorado's Strategic Plan to Stop the Spread of Noxious Weeds and a discussion on the BLM Front Range Center Weed Program.

All meetings are open to the public. The public is encouraged to make oral comments to the Council at 9:30 a.m. or written statements may be submitted for the Councils consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Front Range Center Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management (BLM),

Attn: Ken Smith, 3170 East Main Street, Canon City, Colorado 81212. Phone (719) 269–8500.

Dated: November 25, 2003.

Roy L. Masinton,

Front Range Center Manager.

[FR Doc. 03–30072 Filed 12–2–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–75747]

Notice of Realty Action: Lease/ conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purpose Lease/conveyance correction.

SUMMARY: On October 27, 2003, a Notice of Realty Action was published in **Federal Register** Volume 68, No. 207, page 61231 for BLM serial number N–75747. The legal description for this notice inadvertently listed the Range as R.60E. It should have been listed as R.59E. Therefore, the correct legal description is as follows:

Mount Diablo Meridian

T. 20S., R. 59E.,
Sec. 12
W½NW¼NW¼NW¼,
SW¼NW¼NW¼,
W½SE¼NW¼NW¼,
W½NW¼SW¼NW¼.
Containing 25 acres, more or less.

All of the other information in the NORA was correct.

Dated: November 19, 2003.

Sharon DiPinta,

Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 03–30037 Filed 12–2–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–1232–FH]

Notice of Proposed Supplementary Rules on Public Land In California; Correction

AGENCY: Bureau of Land Management, California Desert District, California, Interior.

ACTION: Supplementary rules for payment of special recreation permit fees immediately upon arrival at the Imperial Sand Dunes Recreation Area; Correction.

SUMMARY: The Bureau of Land Management (BLM) published a document in the **Federal Register** of November 20, 2003, concerning proposed supplementary rules for the Imperial Sand Dunes Recreation Area. The notice contained incorrect information on comment procedures.

FOR FURTHER INFORMATION CONTACT: Neil Hamada, (760) 337–4451, as to the substance of the proposed supplementary rules, or Ted Hudson, (202) 452–5042, as to this correction.

Correction

In the **Federal Register** of November 20, 2003, in FR Doc. 03–28960, on page 65472, in the first column, remove the heading ''Electronic Access and Filing Address'' and the first paragraph following that heading (the first full paragraph in the first column).

Dated: November 24, 2003.

Michael H. Schwartz,

Group Manager, Regulatory Affairs.

[FR Doc. 03–30038 Filed 12–2–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Pursuant to 28 CFR 50.7, notice is hereby given that on November 12, 2003, a proposed Consent Decree between the United States and Paul Sauget was lodged with the District Court for the Southern district of Illinois, in *U.S.* v. *Pharmacia Corporation, et al.* (Civil No. 99–63–GPM).

The United States' Second Amended Complaint in this action asserts that Paul Sauget is jointly and severally liable under Section 107(a)(2) of CERCLA, 42 U.S.C. 9607(a)(2), for response costs that have been or will be incurred by the United States due to the release or threatened release of hazardous substances from several landfills that were operated by Paul Sauget at the Sauget Area 1 Superfund Site located in Sauget and Cahokia, Illinois.

Under the proposed Consent Decree, Paul Sauget will (1) stipulate to a judgment of $9.2 million for past and future response costs; (2) pay to EPA $60,000 which represents his ability to pay the judgment entered against him; and (3) pursue in good faith and to final judgment or settlement, any cause of action that has been or may be asserted against any insurance carrier for indemnification of Paul Sauget's stipulated liability to the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Pharmacia Corporation,* et al., Civ. No. 99–63–GPM (DOJ Ref. No. 90–11–2–06089).

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Illinois, Suite 300 Fairview Heights, Illinois, 62208; and at EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604 (contact Thomas Martin, Esq. (312) 886–4273). During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to *United States* v. *Pharmacia Corporation, et al.,* Civ. No. 99–63–GPM (DOJ Ref. No. 90–11–2–06089), and enclose a check in the amount of $4.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 03–30133 Filed 12–2–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 20, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork

Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual 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 Employment standards Administration (ESA), 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.

Type of Review: Revision of a currently approved collection.

Agency: Employment Standards Administration.

Title: Claim for Medical Reimbursement Form.

OMB Number: 12156–0193.

Affected Public: Individuals or households; Business or other for-profit; and Not-for-profit institutions.

Frequency: As needed.

Type of Response: Reporting.

Number of Respondents: 33,727.

Number of Annual Responses: 134,908.

Estimated Time Per Response: 10 minutes.

Total Burden Hours: 22,394.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $163,239.

Description: The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, *et seq.,* the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.,* and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* These Acts require OWCP to pay for covered medical treatment that is provided to beneficiaries, and also to reimburse beneficiaries for any out-of-pocket covered medical expenses they have paid. Currently, respondents under BLBA use Form CM–915 (approved under OMB No. 1215–0052) to seek reimbursement for out-of-pocket medical expenses they have paid, while respondents under the EEOICPA use Form EE–915 (approved under OMB No. 1215–0197). OWCP is now seeking OMB approval for respondents under FECA, BLBA and EEOICPA using a new form (Form OWCP–915) for all three programs. Clearance of the OWCP–915 for use by beneficiaries from all three programs is a vital step in the unification of OWCP's separate medical bill processing systems under one contractor. The OWCP–915 provides a standardized format for the beneficiary to bill OWCP for recovery of fees paid in connection with their treatment.

Type of Review: Revision of a currently approved collection.

Agency: Employment Standards Administration.

Title: Pharmacy Billing Requirements.

OMB Number: 1215–0194.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Frequency: On occasion.

Type of Response: Recordkeeping and Reporting.

Number of Respondents: 17,295.

Number of Annual Responses: 899,331.

Estimated Time Per Response: 5 minutes.

Total Burden Hours: 74,644.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, *et seq.,* the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.,* and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* These Acts provide, in addition to compensation for employment-related injuries and/or illnesses, medical benefits in the form of prescription drugs dispensed by pharmacies for treatment of the compensable injury or illness. To determine whether bills submitted by pharmacies for medicinal drugs, equipment and supplies are appropriate, the FECA, BLBA, and EEOICPA programs require that the providers billing the government supply certain information. The majority of pharmacy bills submitted to OWCP are now submitted electronically using one of the industry-wide standard formats for the electronic transmissions of billing data through nationwide data clearinghouses devised by the National Council for Prescription Drug Programs (NCPDP). This recent development has led OWCP to drop Form 79–1A as the required paper billing format for this information collection. However, since some pharmacy bills are still submitted using paper-based billing formats, OWCP will continue to accept the paper-based bills as long as they contain the required data elements needed to process the bills. The NCPDP Standardized Pharmacy Billing Data Requirements are the electronic billing format used by pharmacies throughout the country to request payment for prescription drugs through data clearinghouses. They identify the provider, claimant, prescribing physician, drug by NDC (National Drug Code) number, prescription volume and charge. Similar data elements are required to process paper-based pharmacy bills.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–30077 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–CH–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 24, 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

Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be 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: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Overpayment Detection and Recovery Activities.

OMB Number: 1205–0173

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Frequency: Quarterly.

Number of Respondents: 53.

Annual Responses: 212.

Average Response Time: 14 hours.

Annual Burden Hours: 2,968.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Form ETA–227 provides an accounting of the types and amounts of Unemployment Insurance (UI) overpayments and serves as a useful management tool for monitoring the overall integrity in the UI system.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–30078 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 25, 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 at (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 Administration (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: Summary Plan Description Requirements under ERISA.

OMB Number: 1210–0039.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Frequency: On occasion.

Type of Response: Third party disclosure.

Number of Respondents: 1,086,017.

Number of Annual Responses: 148,128,000.

Total Burden Hours: 1,349,254.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $427,874,341.

Description: Section 104(b)(1) of the Employee Retirement Income Security Act of 1974 (ERISA) requires that the administrator of an employee benefit plan furnish plan participants and certain beneficiaries with a Summary Plan Description (SPD) which describes, in language understandable to an average plan participant, the benefits and rights and obligations of participants in the plan. The information required to be contained in the SPD is set forth in section 102(b) of the statute and regulations at 29 CFR 2520.102–3. To the extent that there is a material modification in the term of the plan or a change in the required content of the SPD, section 104(b)(1) requires that the administrator furnish participants and beneficiaries with a summary of material modifications or summary of material reduction.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–30079 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,299]

Cannon-ITT Industries, Santa Ana, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 20, 2003 in response to a petition filed by a company official on behalf of workers at Cannon-ITT Industries, Santa Ana, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 24th day of October, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30086 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,218]

Fishing Vessel (F/V) Cape Lookout, Kodiak, Alaska; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2003 in response to a petition filed by a company official on behalf of workers of F/V Cape Lookout, Kodiak, Alaska.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the investigation has been terminated.

Signed at Washington, DC, this 23rd day of October 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30081 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,333]

Fishing Vessel (F/V) W W Northland, Haines, Alaska; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 24, 2003 in response to a petition filed by a company official on behalf of workers of F/V W W Northland, Haines, Alaska.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by Section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of October 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30088 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,086]

Harlyn Textile Mills, Inc., New York, New York; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 1, 2003 in response to a worker petition which was filed by a company official on behalf of workers at Harlyn Textile Mills, Inc., New York, New York (TA–W–53,086).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of November 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30080 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,237]

The Lane Company, Altavista, Virginia; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 14, 2003, in response to a worker petition filed on behalf of workers at The Lane Company, Altavista, Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 27th day of October, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30082 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,255]

Savane International Corporation, El Paso, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 15, 2003 in response to a petition filed by a state agency representative on behalf of workers at Savane International Corporation, El Paso, Texas. The facility shut down in June of 2002

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation. Workers of the group subject to this investigation did not meet this threshold level of employment. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of October 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30084 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,320]

Standard Motor Company Argos Assemblies Plant Argos, Indiana; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 23, 2003 in response to a petition filed by workers at Standard Motor Company, Argos Assemblies Plant, Argos, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30087 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,364]

Teleflex Automotive Group, Warren, Michigan; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 28, 2003 in response to a petition filed on behalf of workers at Teleflex Automotive Group, Warren, Michigan. The workers produced automotive cable assembly components.

All workers were separated from the subject firm more than one year before the date of the petition. Section 223 (b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of November 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30089 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,263]

Thomson, Inc., Indianapolis, IN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 16, 2003 in response to a petition filed by International Brotherhood of Electrical Workers, Local 1048, on behalf of workers at Thomson, Inc., Indianapolis, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of October 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30085 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,242]

Wellington Leisure Products, Leesville Synthetic Fibers, Leesville, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 14, 2003 in response to a petition filed by a company official on behalf of workers at Wellington Leisure Products, Leesville, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of October, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30083 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–34629]

Gamma Knife Center of the Pacific Environmental Assessment and Final Finding of No Significant Impact; Exemption

The U.S. Nuclear Regulatory Commission is authorizing the Gamma Knife Center of the Pacific, License No. 53–11966–02, an exemption to 10 CFR 35.655, for 120 days to permit the licensee to continue the medical use of its gamma stereotactic radiosurgery unit beyond the interval specified in the regulation for full inspection and servicing.

Environmental Assessment

Identification of the Proposed Action

The Gamma Knife Center of the Pacific has a United States Nuclear Regulatory Commission (NRC) license (License No. 53–11966–02) that authorizes the medical use of a Leksell Gamma Stereotactic Radiosurgery unit. The licensee has requested, in a letter dated September 8, 2003, that the NRC grant a temporary exemption from the requirements of 10 CFR 35.655(a) in order to continue treating patients until the manufacturer's scheduled source replacement in February 2004. This regulation requires that all stereotactic radiosurgery units be fully inspected and serviced at source replacement or at intervals not to exceed 5 years whichever comes first.

The licensee had the Leksell Gamma Stereotactic Radiosurgery unit installed in October 1998 and treated the first patient December 1, 1998. The period of time between manufacturer's scheduled source exchange and the last full inspection service before treatment of the first patient exceeds the required 5 year interval. The licensee in e-mails dated September 11 through 18 clarifies that the manufacturer has indicated the semiannual service, which was last performed July 29, 2003 on the licensee's unit, includes all the tests that can be performed without disassembly of the unit. Such disassembly is not advised at any time other than source replacement because a new Leksell Gamma Stereotactic Radiosurgery unit can contain 6,000 curies of cobalt 60 and disassembly can create high radiation fields unless it is performed at source replacement.

Need for the Proposed Action

The exemption is needed so that Gamma Knife Center of the Pacific can continue to provide medical treatment to its patients. The exemption would allow the Gamma Knife Center of the Pacific to use the gamma stereotactic radiosurgery unit until the manufacturer can remove the sources and perform the full inspection and servicing during source replacement. This inspection and service can only be performed after source removal during source replacement. The exemption would permit continued use of the unit and provide needed timely patient therapeutic services without interruption. The source exchange and inspection service is scheduled for February 2004. The 120-day duration of the exemption allows for flexibility if there is a delay in the manufacturer's ability to ship the sources and perform the source exchange. NRC inspections since 1999 have not identified any violations or medical events associated with the use of the gamma stereotactic radiosurgery unit.

Environmental Impacts of the Proposed Action

The gamma stereotactic radiosurgery unit contains 201 cobalt 60 sealed sources and no material will be released into the environment. All the cobalt-60 is contained within the gamma stereotactic radiosurgery unit, as verified by periodic source leak tests performed by the licensee. The proposed action does not increase public radiation exposure. There will be no impact on the environment as a result of the proposed action.

Alternatives to the Proposed Action

As required by Section 102(2)(E) of NEPA (42 U.S.C. 4322(2)(E)), possible alternatives to the final action have been considered. Only the manufacturer can perform the source exchange and the licensee has already scheduled the source exchange at the manufacturer's earliest available time. The only alternative is to deny the exemption request and to require the licensee to put the sources in storage until the source exchange and full inspection service can be performed. This option would not produce a gain in protecting the human environment, and it would negatively impact the licensee's provision of medical care to its patients.

Alternative Use of Resources

No alternative use of resources was considered due to the reasons stated above.

Agencies and Persons Consulted

No other agencies or persons were contacted regarding this proposed action.

Identification of Source Used

Letter from the Gamma Knife Center of the Pacific, to U.S. Nuclear Regulatory Commission, Region IV, dated November September 8, 2003.

E-mails from Ronald Flick to Jackie Cook, NRC, dated September 11, 12, and 18, 2003.

Finding of No Significant Impact

Based on the above environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate and preparation of an environmental impact statement is not warranted.

The licensee's letter and e-mails are available for inspection, and/or copying for a fee, in the Region IV Public Document Room, 611 Ryan Plaza Drive, Suite 400, Arlington Texas 76011. The documents are available electronically for public inspection from the Publically Available Records (PARS) component of NRC's Documents Access and Management System (ADAMS), accession number ML03300150. ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.*

Dated at Rockville, Maryland, this 26th day of November, 2003.

For the Nuclear Regulatory Commission.

Roberto J. Torres,

Section Chief, Material Safety and Inspection Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–30091 Filed 12–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY: Nuclear Regulatory Commission.

DATE: Weeks of December 1, 8, 15, 22, 29, 2003, January 5, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of December 1, 2003

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—

Tuesday, December 16, 2003

9:30 a.m.
Discussion of Security Issues (Closed—Ex. 1)

Week of December 22, 2003—Tentative

There are no meetings scheduled for the Week of December 22, 2003.

Week of December 29, 2003—Tentative

There are no meetings scheduled for the Week of December 29, 2003.

Week of January 5, 2004—Tentative

There are no meetings scheduled for the week of January 5, 2004.

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.

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 26, 2003.

R. Michelle Schroll,

Information Management Specialist, Office of the Secretary.

[FR Doc. 03–30147 Filed 12–1–03; 9:58 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Big City Radio, Inc., Class A Common Stock, $.01 par value) File No. 1–13715

November 26, 2003.

Big City Radio, Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Class A Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule l8 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors (''Board'') of the Issuer approved a resolution on August 22, 2003 to withdraw the Issuer's Security from listing on the Amex. The Board states the following reasons factored into its decision to withdraw the Security from listing and registration on the Amex: (i) The Issuer has sold all of its operating assets; (ii) the board of directors of the Issuer has unanimously approved a plan to complete liquidation and dissolution for the Issuer; and (iii) the Issuer has

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

obtained stockholders approval of the plan by the written consent of the holders of a majority of the voting power of the Issuer's Security in accordance with the requirements of Delaware law and the Issuer's certificate of incorporation.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under Section 12(b) of the Act [3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before December 19, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–30052 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of the Thai Capital Fund Inc. To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the Pacific Exchange, Inc. File No. 1–06062

November 26, 2003.

The Thai Capital Fund Inc., a Maryland corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value, (''Security''), from listing and registration on the Pacific Exchange, Inc. (''PCX'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer adopted a resolution on October 22, 2003 to withdraw its Security from listing on the Exchange. The Board determined that it would be in the best interest of the Issuer and its shareholders to voluntarily withdraw from listing and registration on the PCX. The Board is currently seeking to list its Security on the American Stock Exchange LLC (''Amex''). The Board states that in its judgment, listing on the Amex will afford investors greater exposure on a larger exchange.

The Issuer stated in its application that it has complied with PCX Rule 5.4(b) that governs the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Security from listing and registration on the PCX and from registration under Section 12(b)[3] of the Act and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before December 19, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–30053 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27770]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 26, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 22, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 22, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

SCANA Corporation, et al. (70–9533)

SCANA Corporation (''SCANA''), a registered public-utility holding company under the Act, its three public-utility subsidiaries, South Carolina Electric & Gas Company (''SCE&G''), South Carolina Generating Company, Inc. (''GENCO'') and Public Service Company of North Carolina, Incorporated (''PSNC'') and its nonutility subsidiaries, South Carolina Fuel Company, Inc. (''SC Fuel''), South Carolina Pipeline Corporation (''SCPC''), SCG Pipeline, Inc., SCANA Energy Marketing, Inc. (''SCANA Marketing''), SCANA Energy Trading, LLC, SCANA Public Service Company, LLC, SCANA Communications, Inc., an exempt telecommunications company under section 34 of the Act, Servicecare, Inc. (''ServiceCare''), Primesouth, Inc., Palmark, Inc., SCANA Resources, Inc., SCANA Development Corporation, SCANA Petroleum Resources, Inc., SCANA Services, Inc. (''SCANA Services''), PSNC Blue Ridge Corporation, PSNC Cardinal Pipeline Company, LLC, and Clean Energy Enterprises Inc. (collectively ''Applicants''), all located at 1426 Main Street, Columbia, South Carolina 29201, have filed a post-effective amendment to their application-declaration (''Application'') under sections 12(b) and (c) of the Act and rules 45, 46 and 54.

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SCANA and PSNC now seek authorization for PSNC to pay dividends out of capital or unearned surplus before taking into consideration any impairment of goodwill recognized as a result of the merger between the companies (''Merger''),[1] in addition to previous authorizations in prior financing orders (''Prior Orders''),[2] which permitted PSNC to pay dividends out of additional paid-in-capital to the amount of its aggregate retained earnings immediately prior to the Merger and out of earnings before the amortization of goodwill.

On February 9, 2000, in the Merger Order, the Commission authorized SCANA to acquire PSNC. SCANA registered as a holding company under the Act on February 11, 2000. SCANA now owns directly three public-utility companies, PSNC, SCE&G (which generates, transmits, distributes and sells electricity and purchases and sells natural gas in South Carolina) and GENCO (which owns and operates a 580 MW generating facility in Goose Creek, South Carolina and sells all of the power generated by the facility to SCE&G).

In the Prior Orders,[3] the Commission authorized SCANA, the three utility subsidiaries and the nonutility subsidiaries to engage, subject to certain limitations, in certain financing and related activities. Authorization for these financing related activities under the Prior Orders expired February 11, 2003.[4] PSNC's authorization, however, to pay dividends out of capital or unearned surplus was not subject to this expiration date.

PSNC was authorized to pay dividends out of the additional paid-in-capital account up to the amount of its aggregate retained earnings immediately prior to the Merger and out of earnings before the amortization of the goodwill arising from the Merger.[5] The authorization was granted to take into consideration (1) the application of the purchase method of accounting to the Merger that caused PSNC's retained earnings, from before the Merger, to be recharacterized as additional paid-in-capital and (2) the substantial level of goodwill resulting from the Merger, which was to be ''pushed-down'' to PSNC and reflected as additional paid-in-capital after the Merger (effectively leaving PSNC with no retained earnings, the traditional source of dividend payments, but a balance sheet showing a significant equity level).

In connection with the Merger, SCANA obtained Commission approval for PSNC to pay dividends (1) out of the additional paid-in-capital account up to the amount of its aggregate retained earnings immediately prior to the Merger and (2) out of earnings before the amortization of the goodwill arising from the Merger.[6]

In 2001, after the Merger in 2000, Statement of Financial Accounting Standard (''SFAS'') 142 (Goodwill and Other Intangible Assets) was issued. SFAS 142 eliminated the previously permitted amortization of goodwill and provides for, at least, an annual assessment to determine whether goodwill amounts are impaired. If the annual analysis determines that goodwill (or other intangibles) is impaired, the company must take an impairment charge in that year. SCANA did such an analysis and, as of January 1, 2002, PSNC was required to take an impairment charge of $230 million against the value of its goodwill. For the years 2000 and 2001, PSNC amortized goodwill, as previously authorized.

Applicants now request that PSNC be authorized to pay dividends out of earnings before any deductions resulting from any impairment of either goodwill recognized as a result of the Merger. SCANA asserts that, based on anticipated earnings and dividend levels, as well as its estimated debt, PSNC will not have common equity below 30% over the next several years. Moreover, SCANA states that, through control of debt and dividend levels, PSNC's common equity can be maintained at a 30% level, at least (even if PSNC were to incur additional goodwill impairment charges). In no case will dividends be paid if the equity of PSNC, as a percentage of total capital, is below 30% on a consolidated basis.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30054 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

[1] By order dated February 9, 2000 (the ''Merger Order''), the Commission authorized SCANA, a South Carolina corporation, to acquire all of the issued and outstanding common stock of PSNC. *See* Holding Co. Act Release No. 27133.

[2] *See* Holding Co. Act Release Nos. 27135 and 27137 (Feb. 14, 2000). In Holding Co. Act Release Nos. 27341 and 27476 (Jan. 31, and Dec. 19, 2001, respectively) the Commission issued supplemental orders increasing various financing limitations throughout the authorization period.

[3] *See* supra note 2.

[4] New financing authorization was granted in Holding Co. Act Release No. 27649 (Feb. 12, 2003) (the ''Current Financing Order'').

[5] The only intangible in the Merger was goodwill.

[6] *See* the Prior Orders, supra note 2.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48829; File No. SR–Amex–2003–95]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Fees for Amex Specialist and Registered Trader Transactions in ETFs

November 24, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on November 13, 2003, the American Stock Exchange LLC (''Exchange'' or ''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. 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

Amex proposes to modify transaction fees for specialist and registered trader transactions in portfolio depository receipts, index fund shares, and trust issued receipts (collectively referred to as ''ETFs''). The text of the proposed rule change is available at Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to reduce transaction fees charged specialists and traders for ETFs. Under the proposed fee changes, specialist per share transaction

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

fees for ETFs where Amex does not pay unreimbursed fees to a third party would be reduced from $0.0063 per share ($0.63 per hundred shares) to $0.0055 per share ($0.55 per hundred shares). Registered trader per share ETF transaction fees would be reduced from $0.0073 per share ($0.73 per hundred shares) to $0.0060 per share ($0.60 per hundred shares).

With respect to ETF fees where Amex pays unreimbursed fees to a third party, specialist per share ETF transaction fees would be reduced from $0.0070 per share ($0.70 per hundred shares) to $0.0059 per share ($0.59 per hundred shares). Registered trader per share ETF transaction fees would be reduced from $0.0076 per share ($0.76 per hundred shares) to $0.0062 per share ($0.62 per hundred shares).

Specialist per trade transaction fees would remain capped at $300 per trade and registered trader per trade maximum transaction fees would be reduced from $350 to $300. In addition, specialist ETF transaction charges would be capped at $700,000 per month per unit. The Exchange intends to implement the proposed fee changes as of December 1, 2003.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(5) of the Act,[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4[6] thereunder, because it establishes or changes a due, fee, or other charge.

At any time within 60 days of November 13, 2003, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should refer to File No. SR–Amex–2003–95 and should be submitted by December 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30057 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] See 15 U.S.C. 78s(b)(3)(C).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48819; File No. SR–NSCC–2003–01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Withdrawal of a Proposed Rule Change Relating to New Rule 59, ''Information Services for Investment Products''

November 21, 2003.

On January 17, 2003, National Securities Clearing Corporation (''NSCC'') submitted to the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] to allow NSCC to provide information services for investment products. The proposed rule change was published in the **Federal Register** on April 17, 2003.[2] One comment letter was received.[3] On June 27, 2003, NSCC withdrew the proposed rule change.[4]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30061 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48838; File No. SR–CBOE–2003–31]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Audit Committee Requirements Applicable to Companies Listing Non-Option Securities

November 25, 2003.

I. Introduction

On July 11, 2003, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 47662 (April 10, 2003), 68 FR 19047.

[3] Letter from Margaret A. Sheehan, Alston & Bird LLP, on behalf of CheckFree Corporation (May 9, 2003).

[4] Letter from Carol A. Jameson, Vice President and Senior Counsel, NSCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (June 26, 2003).

[5] 17 CFR 200.30–3(a)(12).

Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain non-option listing rules of the Exchange in response to the adoption of Rule 10A–3 under the Act.[3] The proposed rule change would require the audit committee of each issuer of non-option securities listed on the CBOE to comply, where applicable, with the standards for audit committees mandated by Section 10A(m) of the Act[4] and Rule 10A–3 thereunder. The Exchange also committed to adopt additional listing policies and requirements pertaining to issuer corporate governance.

The proposed rule change was published for comment in the **Federal Register** on October 2, 2003.[5] The Commission received no comments on the proposal. On November 17, 2003, the CBOE submitted an amendment to the proposed rule change.[6] This order approves the proposal, publishes notice of Amendment No. 1, and approves Amendment No.1 on an accelerated basis.[7]

II. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] Specifically, the Commission finds that the proposal relating to independent audit committees for listed companies is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the CBOE's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Moreover, the Commission believes that the CBOE's proposal to add the new requirements concerning audit committees is appropriate and consonant with Section 10A(m)[10] of the Act and Rule 10A–3 thereunder relating to audit committee standards for listed issuers. The Commission notes that the CBOE intends to file an additional rule proposal relating to other corporate governance listing standards.[11]

Furthermore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[12] to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1, the CBOE expanded, with respect to investment companies, the scope of the proposed provision regarding complaint procedures. Rule 10A–3 requires audit committees to establish procedures for ''the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters.''[13] The amended CBOE proposal would require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. This revision responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting rules to comply with Rule 10A–3, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.[14] The Commission believes that it is appropriate to accelerate approval of this amendment, because it conforms the rule text to similar rules of the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were approved by the Commission,[15] and the amendment raises no new substantive issues.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2003–31 and should be submitted by December 24, 2003.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16], that Amendment No. 1 is approved on an accelerated basis, and that the proposed rule change (File No. SR–CBOE–2003–31) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30056 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.10A–3.

[4] 15 U.S.C. 78j–1(m).

[5] *See* Securities Exchange Act Release No. 48540 (September 25, 2003), 68 FR 56856 (''Notice'').

[6] *See* letter from David Doherty, Attorney, Legal Division, CBOE, to Ira Brandriss, Special Counsel, Division of Market Regulation, Commission, dated November 14, 2003 (''Amendment No. 1''). In Amendment No. 1, with respect to investment companies, the CBOE expanded the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters.

[7] Rule 10A–3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. By the Commission approving the proposed rule change, the Exchange can comply with this deadline.

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78j–1(m).

[11] *See* Notice at note .

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 240.10A–3(b)(3)(ii).

[14] *See* Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003) (release adopting Rule 10A–3).

[15] *See* Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR–NYSE–2002–33 and SR–NASD–2002–141).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48848; File No. SR–FICC–2003–07]

Self-Regulatory Organization; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rebates to Members

November 26, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] notice is hereby given that on August 5, 2003, Fixed Income Clearing Corporation (''FICC''),[2] filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substances of the Proposed Rule Change

The purpose of the proposed rule change is to allow FICC to modify how rebates are calculated and distributed under Section IX of the Government Securities Division (''GSD'') fee structure.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The GSD's rules currently provide for FICC's periodic disbursement of rebates of excess net income back to GSD members (''Rebate Policy'').[4] At the time the Rebate Policy was established by GSCC, management and the board of directors determined that $30 million in shareholders' equity was sufficient to provide GSCC adequate risk protection and also to provide a monetary ''cushion'' for temporary losses and decreases in volumes. Pursuant to the Rebate Policy, shareholders' equity over and above the $30 million threshold would be rebated, pro rata, to members.

Subsequent to implementing the Rebate Policy, several events occurred which adversely impacted GSCC's, and later FICC's, ability to issue the rebates as planned. Due to the terrorist attacks on the World Trade Center on September 11, 2001, GSCC experienced a inordinate number of operational problems that resulted in increased interest payment obligations and liability issues. These matters were not fully resolved until the fourth quarter of 2002 and ultimately resulted in a reduction of GSCC's capital to $29.2 million, below the threshold provided for in GSCC's rules pertaining to the Rebate Policy. The events of 9/11 also made the need for dramatically improved business continuity planning of paramount importance. Industry consensus as to how to best achieve improvements in this area were being developed on an ongoing basis which makes it difficult for GSCC to anticipate future expenses. Finally, following the merger of GSCC and MBSCC to create FICC, the Fixed Income Operations and Planning Committee approved an increase in the amount of the GSD's shareholders' equity required before a rebate from the $30 million minimum to $35 million.

FICC is now in a position in this calendar year (2003) to distribute rebates to GSD members due to an adequate level of shareholder equity and higher-than-anticipated income levels at the GSD. In an effort to make the process of distributing these rebates as fair as possible to all GSD members and also to allow FICC sufficient flexibility to address adverse business and risk conditions, FICC is proposing to modify the GSD's Rebate Policy.

Going forward, when calculating rebate amounts, the GSD will take into account each member's payment of comparison, netting, and clearance fees paid to the GSD. While previously only comparison and netting fees were considered, FICC has reconsidered this formula and believes that the inclusion of clearance fees in the rebate calculation will result in a fairer distribution of rebates to all members. When rebates are calculated, GSD members who paid the highest gross amount in all of these fees combined will receive the largest rebates.[5] In addition, in order to adequately take into account unexpected expenses in a rapidly changing business environment and allow for flexibility in rebate calculation in instances of a member's consolidation or merger, FICC will alter the GSD's Rebate Policy to allow the GSD needed flexibility in determining when rebates should be distributed and the amount of each rebate allotted members. FICC believes that these changes will result in a Rebate Policy that is equitable to the GSD members while also allowing FICC to protect its members by maintaining sufficient shareholders' equity for business and risk management purposes.

FICC anticipates distributing rebates using the revised formula in August of 2003 (subject to Board consideration and approval). The August rebates will take into account fees paid by members from January 1 through June 30, 2003.

The proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[6] and the rules and regulations thereunder because it will allow FICC to fulfill its mission of operating in a not-for-profit manner consistent with maintaining the integrity of FICC's capital base, financial structure, and risk management process.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change will take effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2)[8] thereunder because the proposed rule constitutes a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission could have summarily abrogated such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] The Government Security Clearing Corporation (''GSCC'') and the MBS Clearing Corporation (''MBSCC'') merged into the Fixed Income Clearing Corporation (''FICC'') effective January 1, 2003. FICC operates through two divisions, the Government Securities Division (the ''GSD,'' formerly GSCC) and the Mortgage-Backed Securities Division (''MBSD,'' formerly MBSCC). Each division has retained its own set of rules. This rule filing will address changes to the rules of GSD.

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] GSCC established the Rebate Policy in 2001, Securities Exchange Act Release No. 44502 (July 2, 2001), 66 FR 36351 (July 11, 2001) [SR–GSCC–2001–05].

[5] Rebate amounts will be adjusted for miscellaneous charges as the rule currently provides today.

[6] 15 U.S.C. 77(q–1)(b)(3)(F).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2)

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–FICC–2003–07. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com/gov/gov.other.docs.jsp?NS-query=.com.* All submissions should refer to File No. SR–FICC–2003–07 and should be submitted by December 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30051 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48840; File No. SR–ISE–2003–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange Inc., Relating to Requiring the Fingerprinting of Exchange Employees and Independent Contractors and Other Service Providers

November 25, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 18, 2003, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. ISE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with 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 Exchange is proposing to adopt a new rule pursuant to which it will obtain fingerprints from prospective and current employees, and independent contractors and other service providers, submit those fingerprints to the Attorney General of the United States or his or her designee for identification and processing, and receive criminal history record information from the Attorney General of the United States or his or her designee for evaluation and use in protecting the Exchange's facilities, records, systems, data and other information. The text of the rule amendment is available at the Office of the Secretary of the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to require the fingerprinting of prospective and current employees, and independent contractors and other service providers of the Exchange. The events of September 11, 2001, including the resulting temporary disruption in the securities markets, have led national exchanges and lawmakers alike to evaluate various security requirements, with the objective of enhancing investor protection, business continuity and workplace safety. To that end, the Commission has approved fingerprinting rules for the National Association of Securities Dealers, Inc. (''NASD'') with respect to employees and independent contractors of The Nasdaq Stock Market, Inc. (''Nasdaq'') [5] and for the New York Stock Exchange (''NYSE'') with respect to prospective and current employees, temporary personnel, independent contractors and service providers of each of the Exchange and its principal subsidiaries.[6] ISE is proposing to adopt a rule establishing a fingerprint-based program that is substantially similar to the Nasdaq and NYSE programs.

The proposed rule is consistent with Section 17(f)(2) of Act [7] and Rule 17f–2 thereunder,[8] which require, subject to certain exemptions, a variety of securities industry personnel to be fingerprinted, including every member of a national securities exchange; brokers, dealers, transfer agents, and clearing agencies; and employees of such entities. Although Section 17(f)(2) does not require the Exchange or other self-regulatory organizations to fingerprint their own employees and non-employee service providers, it permits self-regulatory organizations designated by the SEC to have access to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Release No. 34–47240 (January 23, 2003), 68 FR 4810 (January 30, 2003) (SR–NASD–2002–113).

[6] *See* Release No. 34–48118 (July 1, 2003) 68 FR 41033 (July 9, 2003) (SR–NYSE–2003–18).

[7] 15 U.S.C. 78q(f)(2).

[8] 17 CFR 240.17f–2.

''all criminal history record information.''[9]

The proposed rule is also consistent with the laws of the State of New York, where ISE maintains its principal offices. In August 2002, New York State amended its general business law to require fingerprint-based background checks of employees of national securities exchanges who are regularly employed in New York State.[10] The New York law also requires fingerprint-based background checks of non-employees who provide services to the exchange if those individuals have ''access to records * * * or other material or secure buildings or secure property, which place the security of such organization at risk.'' The proposed rule will facilitate the Exchange's compliance with New York State law by facilitating the Exchange's access to criminal history record information maintained by the Federal Bureau of Investigation (''FBI'').

Moreover, fingerprint-based background checks will enhance the Exchange's ability to adequately screen employees and non-employee service providers to better determine whether there are unacceptable risks associated with granting such persons access to the Exchange's facilities, records, systems, data and other information. The proposed rule will permit the Exchange to receive arrest-based criminal history record information from the FBI, which includes conviction, sentencing, probation and parole information. Thus, the information obtained through fingerprint-based background checks will provide a more exhaustive and reliable profile of the criminal records of prospective employees and non-employee service providers, and thereby better facilitate risk assessment, than information provided directly by such persons.

As stated in the proposed rule change, the Exchange will comply with all applicable laws relating to the use and dissemination of criminal history record information obtained from the FBI.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[11] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not anticipate soliciting, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the foregoing rule change as effecting a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days from the date of filing. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. Accordingly, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2003–29 and should be submitted by December 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30059 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78q(f)(2).

[10] N.Y. Gen. Bus. Law 359–e (12–a) (McKinney 2003).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48839; File No. SR–NQLX–2003–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Nasdaq Liffe Markets, LLC to Amend Rule 419 To Make the Information Recording and Submission Requirements for Block Trades and Exchange for Physical Trades Consistent

November 25, 2003.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on November 10, 2003, NQLX, LLC (''NQLX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared by NQLX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. On November 7, 2003, NQLX filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC''), together with a written certification under Section 5c(c) of the Commodity Exchange Act[3] (''CEA'') in which NQLX indicated that

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

the effective date of the proposed rule change would be November 10, 2003.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

NQLX proposes to amend NQLX Rule 419 to make the information recording and submission requirements for Block Trades and Exchange for Physical Trades consistent. Previously, certain requirements applicable to Exchange for Physical Trades were not explicitly applicable to Block Trades.

The text of the proposed rule change appears below. New text is in *italic.* Deleted text is in [brackets].

* * * * *

Rule 419 Block Trades.* * *

(g) Information Recording, Submission, and Dissemination

(1) For *a* [each] Block Trade[,] *in addition to the requirements of Rules 408(b) and 408(c),* a Member or Person Associated with a Member must [ensure that information is recorded and retained] *record* on an Order Ticket [consistent with Rule 408(c)] *the identity of the individual arranging the Block Trade and time stamp the Order when negotiation begins.*

(2)—(7) No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NQLX has prepared statements concerning the purpose of, and statutory basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NQLX proposes revising specified provisions of NQLX Rule 419 so that the information recording and submission requirements for Block Trades and Exchange for Physical Trades are consistent. Previously, certain requirements applicable to Exchange for Physical Trades were not explicitly applicable to Block Trades. First, amended Rule 419(g) would require members to comply with the requirements of NQLX Rule 408(b), in addition to those of NQLX Rule 408(c), when recording and retaining information on an Order Ticket for a Block Trade. Second, amended NQLX Rule 419(g) would require members to record on an Order Ticket the identity of the individual arranging the Block Trade and to time stamp the Order when negotiations begin.

NQLX believes that the proposed rule change is consistent with the requirements, where applicable, under Section 6(h)(3)(J) of the Act[4] and the criteria, where applicable, under Section 2(a)(1)(D)(i)(IX) of the CEA,[5] as modified by joint orders of the Commission and the CFTC.[6]

2. Statutory Basis

NQLX files the proposed rule change pursuant to Section 19(b)(7) of the Act.[7] NQLX believes that the proposed rule change is consistent with the requirements of the Commodity Futures Modernization Act of 2000,[8] including the requirement that NQLX have audit trails necessary and appropriate to facilitate coordinated surveillance to detect, among other things, manipulation.[9] NQLX further believes that its proposed rule change complies with the requirements under Section 6(h)(3) of the Act[10] and the criteria under Section 2(a)(1)(D)(i) of the CEA,[11] as modified by joint orders of the Commission and the CFTC. In addition, NQLX believes that its proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NQLX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others

NQLX neither solicited nor received written comment on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on November 10, 2003. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings will also be available for inspection and copying at the principal office of NQLX. Electronically submitted comments will be posted on the Commission's Internet Web site (*http://www.sec.gov*). All submissions should refer to File No. SR–NQLX–2003–08 and should be submitted by December 24, 2003.

[4] 15 U.S.C. 78f(h)(3)(J).

[5] 7 U.S.C. 2(a)(1)(D)(i)(IX).

[6] *See* Joint Order Granting the Modification of Listing Standards Requirements (Exchange-Traded Funds, Trust-Issued Receipts and shares of Closed-End Funds), Securities Exchange Act Release No. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002) *and* Joint Order Granting the Modification of Listing Standards Requirements (American Depository Receipts), Securities Exchange Act Release No. 44725 (August 20, 2001), 67 FR 42760 (June 25, 2002).

[7] 15 U.S.C. 78s(b)(7).

[8] Pub. L. 106–554, 114 Stat. 2763 (2000).

[9] 15 U.S.C. 78f(h)(3)(J).

[10] 15 U.S.C. 78f(h)(3).

[11] 7 U.S.C. 2(a)(1)(D)(i).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(1).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30064 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48846; File No. SR–NSCC–2003–21]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the New Separately Managed Accounts Service

November 26, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 16, 2003, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would add a new Rule 59 to NSCC's Rules to establish an information messaging system called the Separately Managed Accounts (''SMA'') Service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The SMA Service will provide a messaging hub for the communication of information among sponsors of separately managed accounts and the investment managers participating in their programs.[3] At year-end 2002, the managed account industry had approximately 2 million accounts with approximately $398 billion in assets under management. It is estimated to increase to 5.3 million accounts and $930 billion in assets under management by 2006.[4]

Currently, communication of information among sponsors and investment managers and other participants in the managed account industry is supported by a combination of methods such as multiple proprietary vendor and sponsor applications and platforms supplemented by faxes, emails, and telephone communication. It was the consensus of industry representatives through their participation in the MMI that this current operational infrastructure, which depends upon nonstandard and manual processing over multiple platforms, could not support the projected growth and even at the current levels has resulted in excessive processing costs, delays, and errors.

Accordingly, the MMI commissioned a study of the operational interfaces in the separately managed account industry. This study noted the lack of standardized protocols and processes and centralized connectivity as the major areas of operational concern, and concluded that these inefficiencies could be expected to result in errors with an adverse economic impact. The authors of the study recommended to the MMI that the industry look beyond its current technology and operations platforms to seek an industry-wide approach that would allow the SMA industry to achieve the type of standardized and centralized processing accomplished by the mutual fund industry over the last twenty years.[5]

In response to the operational issues facing the managed account industry and recognizing the benefits that NSCC's mutual fund services provide to the mutual fund industry, in early 2002 the MMI asked NSCC to explore whether NSCC could provide services with similar operational benefits to the separately managed accounts industry, with the view of increasing operational efficiency and decreasing operational risks inherent in the current processing structure. At the request of the MMI, NSCC was subsequently invited to work with the MMI's Technology/Operations Committee and to work with industry representatives to create business communications standards for sponsor firms and investment managers and to develop a message processing utility that would support the standards when published. The initial standards, addressing new account set up, account termination, and account deposits and withdrawals, were delivered to the industry in late 2002. These standardized data elements are available to all vendors, sponsors, and managers to use in programming their various applications.[6]

At the invitation of the MMI, NSCC initiated the SMA Service project development work to assess the feasibility of offering the SMA Service. A prototype of the SMA Service system was made available for industry testing and feedback in January 2003. On May 21, 2003, DTCC presented the proposed service to MMI's Board of Governors and the presentation was well received. On September 4, 2003, NSCC's Board of Directors approved the proposed rule change.

Pending approval of the Commission, the SMA Service will be available for use by members, fund members, and data services only members. As in the case with all NSCC products, NSCC will allow vendors to build interfaces to

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[15] 17 CFR 200.30–3(a)(75).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Separately managed accounts are generally described as professionally managed individual investment portfolios offered to investors such as high net worth individuals. The investor's assets are managed in separate accounts by a sponsor or its custodian that typically contracts with multiple investment managers to provide a diversified investment strategy for the investor. The investor is generally charged an asset-based fee in lieu of commissions and other fee arrangements. Information about the separately managed account industry is available on the Web site of The Money Market Institute (''MMI'') at *http://www.moneyinstitute.com*. The MMI is the national organization for the managed account industry, comprised mostly of portfolio management firms and sponsors of investment advisory and consulting services.

[4] The industry forecasts were developed by the Financial Research Corporation with the cooperation of the MMI through analysis of data provided by MMI members.

[5] ''Operational Interfaces in the Separately Managed Account Industry,'' Deloitte & Touche, published by The Money Management Institute, August 2002. See also, ''2010: A Managed Account Odyssey: Projections in the Future of the Managed Account Industry.'' Leonard A. Reinhart and Jay N. Whipple III © 2002 Lockwood Financial Services, Inc., also equating the current operational infrastructure of the managed account industry to that of the mutual fund industry prior to the implementation of NSCC's mutual fund services.

[6] The standardized data elements are available on the Web site of the MMI at *http://www.moneyinstitute.com* and NSCC at *http://nscc.com*.

NSCC's SMA Service on behalf of NSCC members.

Messages transmitted through the SMA Service will consist of information such as account opening data (*e.g.* account profile notifications, verifications of funding amounts, and authorizations to trade) and account maintenance data (*e.g.*, funding deposit amount notifications, funding withdrawals, and account termination notifications). NSCC will not be responsible for the content of the messages transmitted through the SMA Service nor will NSCC assume any liability for the completeness or accuracy of the information transmitted.

The SMA Service will provide centralized platform for the communication of the basic account opening and maintenance data among sponsors and investment managers. Because the service does not involve money settlement or securities clearance or netting through the facilities of NSCC, it will be a nonguaranteed service of NSCC.[7]

Fees for the use of the SMA Service will be the subject of a separate rule filing.

Establishing the SMA Service at NSCC will facilitate the transmission of standardized information for separately managed accounts products on a centralized communications platform. Standardization and automation on these products can be expected to reduce processing errors and delays that are typically associated with manual processes or the use of multiple platforms and methods to transmit information. This fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and furthers the protections of investors and the public interest. The proposed rule change is therefore consistent with the provisions of the Act and the rules and regulations thereunder.

[7] NSCC offers certain guaranteed services through its CNS system, in which NSCC as a central counterparty provides settlement related guarantees regarding certain trades cleared and netted at NSCC. NSCC also offers nonguaranteed services, such as NSCC's Mutual Fund and Insurance Processing Services, in which members do not receive the protections of an NSCC guarantee. Some of NSCC's nonguaranteed services entail settlement of funds through NSCC (*e.g.* NSCC's FundSERVE® service); other nonguaranteed services involve the communication of information only without settlement of transactions or funds through the facilities of NSCC (*e.g.*, NSCC's Profile service in NSCC's Mutual Fund Services). The SMA Service a nonguaranteed service limited to the communication of information only and does not involve settlement of securities transactions or funds through the facilities of NSCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NSCC–2003–21. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.nscc.com/legal/.* All submissions should refer to the File No. SR–NSCC–2003–21 and should be submitted by December 24, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30050 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48835; File No. SR–CSE–2003–06]

Self-Regulatory Organizations; Order Granting Partial Approval of Proposed Rule Change and Amendment No. 2 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by National Stock Exchange Relating to Audit Committee Requirements Applicable to Companies Listing Non-Option Securities

November 25, 2003.

I. Introduction

On September 12, 2003, the Cincinnati Stock Exchange, now known as National Stock Exchange (''Exchange''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Article IV of its By-Laws pertaining to its listing standards, including the addition of requirements applicable to audit committees of listed companies.[3] The proposed rule change would require each issuer listed on the Exchange to have an audit committee that complies with the standards for audit committees mandated by Section 10A(m) of the Act[4] and Rule 10A–3 thereunder.[5] The proposed rule change also would specify composition and member qualification requirements for

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In the proposed rule change, the Exchange also proposed to amend Article IV, Section 2 of the Exchange's By-Laws pertaining to unlisted trading privileges. The Commission is not approving this amendment at this time.

[4] 15 U.S.C. 78j–1(m).

[5] 17 CFR 240.10A–3.

audit committees of listed issuers; include a requirement that audit committees have a written charter; and set forth other standards relating to audit committees and the contents of their charters. It would also set forth the operative dates for the new requirements. The proposed rule change also would make several other changes to Article IV of the By-Laws, as more fully described in the Notice.[6] The Exchange also committed to adopt additional listing policies and requirements pertaining to issuer corporate governance.

The proposed rule change was published for comment in the **Federal Register** on October 20, 2003.[7] The Commission received no comments on the proposal. On November 19, 2003, the Exchange submitted an amendment to the proposed rule change.[8] On November 21, 2003, the Exchange submitted a second amendment to the proposed rule change.[9] This order approves the proposed rule change and Amendment No. 2, other than the proposed amendment to Article IV, Section 2 of the By-Laws relating to unlisted trading privileges; publishes notice of Amendment No. 1; and approves Amendment No.1 on an accelerated basis.[10]

II. Discussion

After careful review, the Commission finds that the amended proposed rule change, except for the provision of the proposal relating to unlisted trading privileges, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission finds that the proposal relating to independent audit committees for listed companies and the other proposed revisions to Article IV, Sections 1 and 3 of the Exchange's By-Laws are consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.[13] Moreover, the Commission believes that the Exchange's proposal to add the new requirements concerning audit committees is appropriate and consonant with Section 10A(m) of the Act [14] and Rule 10A–3 thereunder relating to audit committee standards for listed issuers. The Commission notes that the Exchange intends to file an additional rule proposal relating to other corporate governance listing standards.[15]

Furthermore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[16] to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1, the Exchange expanded, with respect to investment companies, the scope of the proposed provision regarding complaint procedures. Rule 10A–3 requires audit committees to establish procedures for ''the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters.'' [17] The amended Exchange proposal would require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. This revision responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting rules to comply with Rule 10A–3, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.[18] In Amendment No. 1, the Exchange also made several technical revisions to the rule text. The Commission believes that it is appropriate to accelerate approval of this amendment, because it conforms the rule text to similar rules of the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were approved by the Commission,[19] and the amendment raises no new substantive issues.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–2003–06 and should be submitted by December 24, 2003.

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[6] *See* Securities Exchange Act Release No. 48624 (October 10, 2003), 68 FR 59957 October 20, 2003 (''Notice'').

[7] *Id.*

[8] *See* letter from Jennifer M. Lamie, Assistant General Counsel and Corporate Secretary, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 18, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange made minor, non-substantive changes to the text of the proposed rule and, with respect to investment companies, expanded the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters.

[9] *See* letter from Jennifer M. Lamie, Assistant General Counsel and Corporate Secretary, Exchange, to Nancy Sanow, Assistant Director, Division, Commission, dated November 20, 2003 (''Amendment No. 2''). In Amendment No. 2, the Exchange made minor, non-substantive changes to the text of the proposed rule by replacing references to ''CSE'' with ''Exchange.'' This was a technical amendment and is not subject to notice and comment.

[10] Rule 10A–3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. By the Commission approving the proposed rule change in part, the Exchange can comply with this deadline.

[11] In approving these portions of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] The Commission notes that it is not approving the proposed changes to Article IV, Section 2 of the Exchange's By-Laws pertaining to unlisted trading privileges. The Exchange intends to revise at a later date its proposal relating to unlisted trading privileges. Any such amendment would require an affirmative vote by the Exchange's membership. Telephone conversation between Jennifer M. Lamie, Assistant General Counsel and Corporate Secretary, Exchange, Nancy Sanow, Assistant Director, Division, Commission, and Ira L. Brandriss, Special Counsel, Division, Commission, on November 18, 2003.

[14] 15 U.S.C. 78j–1(m).

[15] *See* Notice at note .

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 240.10A–3(b)(3)(ii).

[18] *See* Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003) (release adopting Rule 10A–3).

[19] *See* Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR–NYSE–2002–33 and SR–NASD–2002–141).

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act[20], that Amendment No. 1 is approved on an accelerated basis, and that the portions of the proposed rule change and Amendment No. 2 (File No. SR–CSE–2003–06) relating to Sections 1 and 3 of Article IV of the Exchange's By-Laws be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30058 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48833; File No. SR–NYSE–2003–33]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to Exchange Fees for Closed-End Funds

November 25, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. On November 24, 2003, the NYSE filed Amendment No. 1 to the proposed rule change.[3] 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 New York Stock Exchange, Inc. (the ''Exchange'' or the ''NYSE'') proposes to amend Section 902.02 of the Listed Company Manual (the ''Manual'') to amend the continued listing fees applicable to closed-end funds. The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Listed Company Manual

902.00 Listing Fees

* * * * *

902.02 Schedule of Current Listing Fees

* * * * *

C. Continuing Annual Fee

* * * * *

The continuing annual fees for closed end funds are as follows:

[Per Share Rates—	
1st and 2nd million shares	$1,650
Additional shares	830
Minimum Fees—	
Million Shares	
1+–10	$25,000
10+–50	35,000
50+–100	48,410
100+–200	64,580
200+	80,440]

[All issued shares are included in the continuing annual fee calculation for closed end funds, except those which have been subject to a continuing annual fee for a consecutive period of 15 years. After 15 years, such shares are excluded in the calculation of fees on the per share basis.] *Closed end funds will pay at a rate of $930 per million shares, subject to a minimum annual fee of $25,000.* Fund families with between [5] *3* and [15] *14* closed-end funds listed *will* receive a 5% discount off the calculated continuing annual fee for each fund listed, and those with [16 or] more *than 14* listed closed-end funds will receive a discount of [10] *15*%. No fund family shall pay aggregate continuing annual fees in excess of $1 million in any one year.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has recently reduced the original listing fees applicable to closed-end funds,[4] and has capped at $75,000 the original listing fees applicable to two or more funds from the same fund family listing on the same date.[5]

The Exchange is now proposing to amend the continuing annual listing fees applicable to closed-end funds by establishing a new continuing fee structure with increased fund family discounts, and a new per million share base rate applicable to all closed-end funds.

In establishing a new base rate applicable to all closed-end funds, the Exchange will no longer apply the existing five-tiered continued listing fee structure and, instead, closed-end funds will pay at a rate of $930 per million shares, subject to a minimum annual fee of $25,000. To clarify the applicability of the $25,000 minimum, that amount would actually cover funds with up to 26,881,720 shares outstanding. It is only beyond that size that the multiplication of the per share rate ($930/million) by the shares outstanding would produce a fee in excess of the $25,000 minimum.

The Exchange also proposes to increase and expand the availability of the discounts applicable to fund families with multiple funds listed. As proposed, fund families with between 3 and 14 closed-end funds listed will receive a 5% discount off the calculated continuing annual fee for each fund listed, and those with more than 14 listed closed-end funds will receive a discount of 15%. Currently, fund families with between 5 and 15 closed-end funds listed receive a 5% discount off the calculated continuing annual fee for each fund listed, and those with 16 or more listed closed-end funds receive a discount of 10%.

In a previous filing revising listing fees generally,[6] the Exchange eliminated the fee policy under which shares subject to continuing annual fees for a period of 15 consecutive years became exempt from further fees. At the time, the Exchange noted that it was

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 24, 2003 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 48360 (August 18, 2003), 68 FR 51045 (August 25, 2003) (SR-NYSE–2003–22).

[5] *See* Securities Exchange Act Release No. 48685 (October 23, 2003), 68 FR 61710 (October 29, 2003) (SR–NYSE–2003–32).

[6] *See* Securities Exchange Act Release No. 47115 (December 31, 2002), 68 FR 1495 (January 10, 2003) (SR–NYSE–2002–62).

continuing the 15-year exemption policy for closed-end funds pending further study and revision of the fees charged to closed-end funds generally. Given the new fee structure implemented for closed-end funds under this proposal and the other filings referred to herein, the Exchange has concluded that it is now appropriate to eliminate the 15-year exemption policy for closed-end funds consistent with the amendments made with respect to listed operating companies in December 2002.

The impact of the proposed continuing annual fee changes in their entirety on an individual fund will vary depending on a fund's shares outstanding and other circumstances. First of all, the Exchange states that its rule has, and will continue to have, an overall fund family fee cap of $1 million per year. Of the 407 listed closed end funds, the Exchange states that 118 are in fund families covered by the $1 million fee cap. Of the remaining 289 funds, factoring in the net effect of the change to the new per share rate from the existing five-tiered formula, the elimination of the 15-year exemption policy, and the increases in the fund family discounts, the Exchange's analysis (based on the information it currently has on fund shares outstanding) is that 55 funds would experience an increase in continuing annual fees, 150 would experience a decrease, and 84 would experience no net change. Of those that can be expected to experience an increase, the Exchange expects that the average increase would be 15.6% and the median increase 8.2%. The Exchange expects that the maximum increase for any one fund would be 73% (in that case, $44,700). Of the 150 funds the Exchange expects to experience a decrease, the average decrease would be 25.4% and the median decrease would be 28.6%. The maximum decrease for any one fund would be 36% (in that case, $12,000). While some funds would experience an increase in continuing annual fees and others a decrease, the overall impact on the Exchange would be a net decrease in continuing annual fees of approximately $900,000.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)[7] that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

[7] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to File No. SR–NYSE–2003–33 and should be submitted by December 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30063 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48820; File No. SR–OCC–2002–23]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Withdrawal of a Proposed Rule Change Relating to Physically-Settled Futures on Narrow-Based Stock Indexes

November 21, 2003.

On September 30, 2002, The Options Clearing Corporation (''OCC'') submitted to the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] that would allow OCC to provide clearance and settlement services for physically-settled futures on narrow-based stock indexes. The proposed rule change was published in the **Federal Register** on October 9, 2002.[2] No comment letters were received. On June 26, 2003, OCC withdrew the proposed rule change.[3]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30060 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46593 (October 2, 2002), 68 FR 63006.

[3] Letter from Jean M. Cawley, First Vice President and Deputy General Counsel, OCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (June 26, 2003).

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48836; File No. SR–Phlx–2003–51]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Listing Standards Regarding Issuer's Audit Committees and Delisting Procedures

November 25, 2003.

I. Introduction

On July 14, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Phlx Rule 849, Audit Committee/Conflicts of Interest, and Phlx Rule 811, Delisting Policies and Procedures.

The provisions in the proposed rule change mostly are intended to comply with the requirements mandated by Section 10A(m) of the Act[3] and Rule 10A–3 thereunder.[4] Additional changes in the proposal relate to audit committee charters, audit committee composition requirements, audit committee approval of related party transactions, and revisions to the Exchange's delisting rule. The Exchange also committed to adopt additional listing policies and requirements pertaining to issuer corporate governance.

The proposed rule change was published for comment in the **Federal Register** on October 16, 2003.[5] The Commission received no comments on the proposal. On November 20, 2003, the Phlx submitted an amendment to the proposed rule change.[6] This order approves the proposed rule change, publishes notice of Amendment No. 1, and approves Amendment No. 1 on an accelerated basis.[7]

II. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the Phlx's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Moreover, the Commission believes that the Exchange's proposal to add the new requirements concerning audit committees is appropriate and consonant with Section 10A(m) of the Act and Rule 10A–3 thereunder relating to audit committee standards for listed issuers. The Commission notes that the Phlx intends to file an additional rule proposal relating to other corporate governance listing standards.[10]

Furthermore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[11] to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1, the Phlx expanded, with respect to investment companies, the scope of the proposed provision regarding complaint procedures. Rule 10A–3 requires audit committees to establish procedures for ''the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters.''[12] The amended Phlx proposal would require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. This revision responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting rules to comply with Rule 10A–3, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.[13] The Commission believes that it is appropriate to accelerate approval of this amendment, because it conforms the rule text to similar rules of the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were approved by the Commission,[14] and the amendment raises no new substantive issues.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–51 and should be submitted by December 24, 2003.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[15], that Amendment No. 1 is approved on an accelerated basis, and that the proposed rule change (File No. SR–Phlx–2003–51) be, and it hereby is, approved.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78j–1(m).

[4] 17 CFR 240.10A–3.

[5] *See* Securities Exchange Act Release No. 48601 (October 8, 2003), 68 FR 59666 (''Notice'').

[6] *See* letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx, to Ira L. Brandriss, Special Counsel, Division of Market Regulation, Commission, dated November 19, 2003 (''Amendment No. 1''). In Amendment No. 1, with respect to investment companies, the Phlx expanded the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters.

[7] Rule 10A–3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. By the Commission approving the proposed rule change, the Exchange can comply with this deadline.

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* Notice at note .

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 240.10A–3(b)(3)(ii).

[13] *See* Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003) (release adopting Rule 10A–3).

[14] *See* Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR–NYSE–2002–33 and SR–NASD–2002–141).

[15] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30055 Filed 12–2–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48847; File No. SR–Phlx–2003–73]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Demutualization of the Philadelphia Stock Exchange, Inc.

November 26, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 17, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 24, 2003, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] On November 26, 2003, the Phlx submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Section 19(b)(1) and Rule 19b–4 thereunder,[5] proposes to: (i) First amend Article FOURTH of its Certificate of Incorporation to eliminate the terms providing that it is ''not for profit'' and that ''no dividend shall ever be paid by the Corporation'' (''Plan of Conversion'' and such amendment to the Certificate of Incorporation, the ''Conversion Amendment''); and (ii) subsequently merge a newly created, wholly-owned shell subsidiary of the Phlx with and into the Phlx, with the Phlx surviving as a ''demutualized'' [6] Delaware stock corporation (the ''Merger,'' and together with the Plan of Conversion, the ''Plan of Demutualization'') pursuant to an Agreement and Plan of Merger (''Merger Agreement'').[7] In connection with the Plan of Demutualization, the Phlx will amend its Certificate of Incorporation (''Certificate of Incorporation''), By-laws (''By-laws'') and Rules of the Board of Governors, Option Rules, ITS Rules and Options Floor Procedure Advices (collectively, the ''Rules'').[8] The Phlx will, upon completion of the Demutualization, issue pursuant to the Merger Agreement 100 shares of its Class A Common Stock to each equitable titleholder of an Exchange membership. As discussed more fully below, the Phlx will also issue one share of Series A–1 Preferred Stock, par value $0.01 (''Series A Preferred Stock'') to the ''Phlx Member Voting Trust'' (the ''Trust'') in accordance with an Amended and Restated Trust Agreement (''Trust Agreement'').

The proposed changes to the Certificate of Incorporation, the By-laws and the Rules, as well as the Trust Agreement and the Conversion Amendment are collectively referred to herein as the ''Proposed Rule Change.'' The text of the amendments to the Certificate of Incorporation, By-laws and Rules is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, at the Commission, and on the Commission's website.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the Proposed Rule Change is to implement the Plan of Demutualization of the Phlx. In connection with such Plan of Demutualization, trading privileges will be separated from corporate ownership of the Phlx and will be made available exclusively through trading permits, as described in greater detail below. [9]

As a result of the Demutualization, the total of 50,500 shares of Class A Common Stock (100 shares per Seat) issued to existing equitable Seat holders will represent 100% of the common equity ownership in the Phlx outstanding immediately after the Demutualization, and all Members and holders of equity trading permits [10] who are affiliated with Member Organizations and are not suspended will be entitled to receive new Series A–1 Permits (described further below) to enable them to continue their activities on the Exchange without interruption. Similarly, Member Organizations will maintain their status upon their compliance with certain deposit and registration requirements, as described in greater detail below.

After the effective date of the Demutualization, the Exchange will continue to be a national securities exchange registered under Section 6 of the Act.[11] Except as will be necessary to implement the new permit structure to replace the existing structure of owning and leasing Seats as a basis for trading rights and Exchange memberships, the

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Edith Halihan, Deputy General Counsel, Phlx to Nancy Sanow, Assistant Director, Commission, Division of Market Regulation (''Division'') dated November 21, 2003. (''Amendment No. 1''). In Amendment No. 1, the Phlx made technical conforming changes to the exhibits of the proposed rule change.

[4] *See* Letter from Edith Halihan, Deputy General Counsel, Phlx to Nancy Sanow, Assistant Director, Commission, Division dated November 26, 2003. (''Amendment No. 2''). In Amendment No. 2, the Phlx amended the proposed rule change to reflect that on November 25, 2003, the members of the Phlx (as that term is defined in Section I–1(b) of the current By-laws of the Phlx, the ''Members'') approved the Plan of Conversion, the Merger, and all transactions to be effected in connection therewith. Also, on November 18, 2003, holders of equitable title (''Owners'') to memberships in the Phlx (each such membership a ''Seat'') voted to approve the Plan of Demutualization as a whole.

[5] 17 CFR 240.19b–4

[6] This process is also referred to in this notice as the ''Demutualization.''

[7] Under the existing Certificate of Incorporation and By-laws and applicable law, the approval of the Owners is not required to effect the Plan of Demutualization.

[8] In certain limited cases, the proposed rule change also reflects the deletion of obsolete provisions and other necessary updates in the By-laws and the Phlx Rules that are not directly related to the Plan of Demutualization and are summarized in greater detail below.

[9] The Exchange, however, does plan to retain its existing Foreign Currency Option (''FCO'') participations (as defined in Section 1–1(m) of the current By-laws). After the Demutualization, the ability to trade FCOs on the Phlx will also be available through a Series A–1 Permit, as set forth in proposed Rule 908(b).

[10] Pursuant to Rule 23 of the existing Phlx Rules, the Exchange has issued equity trading permits (''ETPs''), four of which are currently outstanding. As described in greater detail below, in the Demutualization, these ETPs will be eliminated in accordance with existing Rule 23 and pursuant to proposed Rule 971, and the rights and privileges of ETPs will be conferred on existing ETP holders by Permits, as described below.

[11] 15 U.S.C. 78f.

Exchange is not proposing any significant changes to its existing operational and trading structure in connection with the Demutualization. Also, the Demutualization will not affect the functions of the Exchange as a self-regulatory organization (''SRO'') and will not affect the designation of the Exchange as ''designated examining authority'' (''DEA'') for the Member Organizations for which the Exchange is the DEA today. In particular, the Exchange is not proposing to make any changes to the existing disciplinary system, fines or the related appellate process in connection with the Plan of Demutualization.[12]

The Exchange proposes to effect the Plan of Demutualization and the Proposed Rule Change for the following reasons: (i) The Phlx is facing significant financial challenges, and without the Demutualization the Phlx's viability in its current operating structure is questionable; (ii) without the Demutualization, the Phlx will be limited, to a large degree, to its current base of Members and Owners as a source of capital and revenue; (iii) the Demutualization of the Phlx will potentially facilitate the Exchange's ability to enter into relationships with strategic or financial partners who may be crucial for the Exchange's future development, capital formation and viability; (iv) the new permit structure may facilitate the introduction of new products on the Exchange and will potentially increase transaction volume and Exchange revenues; and (v) a demutualized Exchange will be better positioned to react to new opportunities and challenges.

In addition to those portions of the Proposed Rule Change which relate directly or indirectly to the Plan of Demutualization, described below under ''Summary of Demutualization—Related Changes,'' the Exchange is also proposing certain other revisions to the By-laws and the Rules as part of the Proposed Rule Change, which are primarily related to the deletion of out-dated or otherwise obsolete provisions in the By-laws and Rules, including changes required to conform the By-laws to requirements under the Act. These changes are summarized below under ''Summary of Non-Demutualization-Related Changes.''

[12] Separately, the Exchange intends to file a proposed rule change to adopt fees applicable to Series A–1 Permits and to make conforming changes to its fee schedule as a result of the Demutualization. Accordingly, the Merger Agreement provides that the effectiveness of the Merger (and thus the Plan of Demutualization in general) will be, *inter alia,* conditioned upon such filing becoming effective or being approved by the Commission, as the case may be.

i. Summary of Demutualization-Related Changes

The following summarizes the proposed material changes to the Certificate of Incorporation, the By-laws and the Rules (collectively, the ''Governing Documents'') of the Exchange in connection with the Plan of Demutualization:

A. Capital Structure of the Demutualized Phlx

Changes to the capital structure of the Phlx, as set forth in Article FOURTH of the proposed Certificate of Incorporation, generally reflect the proposed conversion of the Phlx from a non-stock Delaware corporation to a demutualized Delaware stock corporation. As discussed in greater detail below, the single share of the Series A Preferred Stock, issued to the Trust governed by the Trust Agreement, is designed to facilitate the exercise by Members and Member Organizations of their rights to fair representation in the selection and removal of On-Floor Governors of the Exchange and to facilitate the administration of the affairs of the Exchange in accordance with the Act. The voting arrangements implemented through the Trust Agreement and the Series A Preferred Stock are designed to give ''members'' (as defined in Section 3(a)(3)(A) of the Act)[13] a voice in the management of the Exchange after the Demutualization. These arrangements are necessary for two reasons: (i) Under Delaware law, only stockholders can elect the directors of a Delaware corporation; and (ii) after the Demutualization, Members and Member Organizations that were not Owners at the time of the Demutualization will not be stockholders of the Exchange.

Authorized and Issued Capital Stock

Pursuant to Article FOURTH of the proposed Certificate of Incorporation, after the Merger, the authorized capital stock of the Phlx will consist of:

- 50,500 shares of Class A Common Stock;
- 949,500 shares of Class B Common Stock, par value $0.01 per share (''Class B Common Stock,'' and together with the Class A Common Stock, the ''common stock''); and
- 100,000 shares of preferred stock, par value $0.01 per share, one of which will be designated as ''Series A Preferred Stock.''

Upon consummation of the proposed Demutualization, the only capital stock outstanding will be the 50,500 shares of Class A Common Stock and the single share of Series A Preferred Stock. The Exchange proposes to authorize more shares of common stock (in the form of the Class B Common Stock) and preferred stock to allow for a more flexible approach to third-party investments and strategic relationships, which the Exchange believes will be critically important to its survival. Article FOURTH of the proposed Certificate of Incorporation will allow the Board of Governors to create and issue in the future additional classes or series of preferred stock without stockholder approval. In a separate undertaking, however, the Exchange has agreed to submit any such creation and issuance of additional classes or series of preferred stock to the Commission pursuant to Section 19(b) of the Act.[14] The issuance and the sale, transfer or other disposition of the Exchange's capital stock will be subject to certain voting and ownership limitations, described below.

Common Stock

Class A Common Stock and Class B Common Stock. Pursuant to Article FOURTH(b)(i) of the proposed Certificate of Incorporation, the Class A Common Stock and the Class B Common Stock will be identical in all respects and will have equal rights and privileges, except for the right to receive the Contingent Dividend (as defined below). Pursuant to Article FOURTH (b)(vi) of the proposed Certificate of Incorporation, each share of Class A Common Stock will automatically convert into one share of Class B Common Stock on the third anniversary of the closing of the Plan of Demutualization (the ''Dividend Termination Date''). [15] Before the automatic conversion, the proposed Certificate of Incorporation will provide that the Exchange will have to notify the holders of the Class A Common Stock in accordance with certain specific requirements set forth in the Certificate of Incorporation.

Dividends (including the Contingent Dividend). Currently, the existing Certificate of Incorporation provides in Article FOURTH that the Phlx is ''not for profit'' and ''no capital stock shall ever be issued and no dividend shall ever be paid'' by the Phlx. After the

[13] 15 U.S.C. 78c(a)(3)(A).

[14] 15 U.S.C. 78s(b).

[15] The automatic conversion will be effected as a matter of administrative convenience to consolidate the common stock into a single class after the Contingent Dividend with respect to the Class A Common Stock is no longer potentially payable (*i.e.*, on the Dividend Termination Date). At the time of conversion, because the Contingent Dividend will no longer be potentially payable, the Class A Common Stock and the Class B Common Stock will have identical rights and privileges.

Demutualization, this restriction on paying dividends will be removed and pursuant to Article FOURTH (a)(i) and (b) of the proposed Certificate of Incorporation the Phlx's stockholders will have all dividend and other distribution rights of a stockholder in a Delaware stock corporation (except as may be limited by the rights any preferred stock may have, once issued).

Section 30–4 of the proposed By-laws, however, will prohibit the payment of dividends from any revenues the Phlx derives from regulatory fines, fees or penalties.[16] The Exchange will apply this limitation to its net income, prospectively only, commencing with the fiscal year in which the Merger occurs.[17] To determine the amount of the limitation, the Phlx will first calculate: (i) The amount of regulatory fines, fees and penalties that it has accrued for the fiscal year in which the Merger occurs and later time periods (collectively, ''Regulatory Fee Amount''),[18] and (ii) the amount of regulatory costs and expenses [19] accrued for the same time period (collectively, ''Regulatory Cost Amount''). The Exchange will determine the applicable restriction by determining the excess, if any, of the Regulatory Fee Amount over the Regulatory Cost Amount, and applying that to the amount of its net income for the fiscal year in which the Merger occurs and later periods. This restriction concerning the payment of dividends shall not prevent the Exchange from paying dividends from (i) capital, surplus or retained earnings of the Exchange which were (without regard to this restriction) available for the payment of dividends at the time of the Merger, or (ii) capital contributions or other capital items, in each case, no portion of which is attributable to Regulatory Fees.

Pursuant to Article FOURTH (b)(ii) of the proposed Certificate of Incorporation, the Class A Common Stock will carry with it the right to a contingent dividend (the ''Contingent Dividend'') payable in cash if a Liquidity Event occurs on or before the Dividend Termination Date. A ''Liquidity Event'' will be any investment of net cash proceeds in the Phlx's capital or that of one of its subsidiaries, either by means of a public offering or private placement of the common or preferred stock of the Phlx or the common stock or other securities of the subsidiary. The amount payable as the Contingent Dividend will depend, as follows, on the aggregate amount of net cash proceeds received by the Phlx and/or the subsidiary from all Liquidity Events occurring on or before the Dividend Termination Date:

- If the aggregate net cash proceeds will be at least $50 million but less than $100 million, the amount payable as a Contingent Dividend will be $7,500 for each 100 shares of Class A Common Stock ($3,787,500 in the aggregate).
- If the aggregate net cash proceeds will be at least $100 million but less than $150 million, the amount payable as a Contingent Dividend will be $17,500 for each 100 shares of Class A Common Stock then outstanding ($8,837,500 in the aggregate).
- If the aggregate net cash proceeds will be at least $150 million, the amount payable as a Contingent Dividend will be $29,700 for each 100 shares of Class A Common Stock then outstanding ($14,998,500 million in the aggregate).

If no Liquidity Event occurs on or before the Dividend Termination Date, the right to receive Contingent Dividends will terminate without further action on behalf of the Exchange and the Class A Common Stock will be automatically converted into Class B Common Stock, as indicated above.

Liquidation Rights and Preferences. Currently, Owners have the right to receive all distributions upon a liquidation of the Exchange, on the basis of their pro-rata interest in the Phlx, except as such right may be limited by certain rights of the holders of FCO participations.[20] After the proposed Demutualization, the Phlx common stock will have the right to receive all distributions upon a liquidation of the Phlx, subject to the rights of any preferred stock that may be issued in the future and by the rights of the holder of the Series A Preferred Stock, as described below.

Voting Rights/Election of Directors. Currently, for the most part, non-Member Owners do not have voting rights under the Exchange's existing Certificate of Incorporation, By-laws and Rules with respect to any matters relating to the Exchange, with certain very limited exceptions.[21] After the Demutualization, pursuant to Article FOURTH (b)(iii) of the proposed Certificate of Incorporation, the Phlx common stockholders will vote on all matters on which stockholders are entitled to vote except for the election and removal of the On-Floor Governors and, in the case of a contest for the position, the selection of the On-Floor Vice Chairman of the Exchange.

The holders of the Class A Common Stock and Class B Common Stock will vote together as a single class on all matters, except that: (i) Any amendment, alteration or repeal of any of the provisions of the proposed Certificate of Incorporation that adversely affects the rights, powers or privileges of the Class A Common Stock (but not of the Class B Common Stock) will require the affirmative vote of a majority of the shares of the Class A Common Stock then outstanding, voting separately as a class; and (ii) any amendment, alteration or repeal of any of the provisions of the proposed Certificate of Incorporation that adversely affects the rights, powers or privileges of the Class B Common Stock (but not of the Class A Common Stock) will require the affirmative vote of a majority of the shares of Class B Common Stock then outstanding, voting separately as a class.

In addition, pursuant to Section 22–1 of the proposed By-laws, the By-Laws may be amended by the affirmative vote

[16] For another example of such a restriction, see In the Matter of the Application of The International Securities Exchange LLC for Registration as a National Securities Exchange, Securities Exchange Act Release No. 42455 at Part III.A (February 24, 2000), 65 FR 11388. Securities Exchange Act Release No. 45803 (April 23, 2002), 67 FR 21306 (April 30, 2002) (Restructuring of the International Securities Exchange LLC (''ISE'') from a limited liability company to a Delaware stockholder corporation and to ''demutualize'' by separating the equity interest in the ISE from members'' trading rights).

[17] The rationales for applying this restriction prospectively are: (i) prior to the effectiveness of the Conversion Amendment, the Exchange's Certificate of Incorporation has provided that the Exchange is ''not for profit'' and has prohibited the payment of dividends altogether, and (ii) the Exchange has not compiled, and could not reasonably reconstruct, the information necessary for determining Regulatory Costs and Regulatory Fee Amounts (as defined herein) for prior periods.

[18] Regulatory fines and penalties will include such amounts imposed by the Business Conduct Committee and/or the Board, but not late charges or interest charged. Regulatory fees shall include the Exchange's fees relating to registered representative registration (currently, initial, renewal and transfer fees), as well as its off-floor trader (currently, initial and annual) and examinations fees.

[19] These amounts include costs reasonably related to the Exchange's regulatory function. Specifically, the Exchange intends to include the direct and allocated costs and expenses of the regulatory and enforcement groups as well as an allocation of the direct and allocated costs of technology, legal, compliance and other departments that support the regulatory and enforcement groups and work on regulatory projects. The Exchange's cost allocation methodology includes an employee's compensation and benefits-related costs and the overhead attributable to that employee, such as, for example, occupancy costs, office supplies, and administrative support and an allocation of management costs (again, adding, for example, the secretary's and managers' direct and allocated costs).

[20] *See* Article SEVENTEENTH(c) of the existing Certificate of Incorporation.

[21] In addition, existing contractual arrangements between Owners of Seats or Member Organizations on the one hand and non-Owner Members on the other hand, such as leases or A-B-C agreements, in all but one case contain a provision that may entitle the Seat Owner or the Member Organization, respectively, to direct the Member's vote with respect to the Plan of Demutualization.

of a majority of the entire Board of Governors, or by the affirmative vote of the holders of a majority of the shares of common stock then issued and outstanding, at any regular or special meeting of the Board of Governors or the stockholders (as the case may be). Unlike pursuant to Section 22–1 of the existing By-laws, after the Demutualization, Members (or Member Organizations) will have no right to vote in relation to By-law amendments or to propose By-law amendments. Such change is consistent with the Exchange's proposed post-Demutualization structure as a Delaware stock corporation in accordance with applicable Delaware law.

With respect to management equity awards post-Demutualization, Section 6–1 of the proposed By-laws provides that, the Exchange will not at any time adopt any stock incentive or option plan or arrangement, or any other equity based compensation plan or arrangement, for the benefit of its governors or officers that authorizes the issuance of stock, stock options or any other securities exercisable or exchangeable for or convertible into any equity interest in the Exchange representing more than 10% of the common stock outstanding at such time.

The proposed Article FOURTH (b)(iii)(A) provides also that each stockholder will be entitled to one vote for each share of common or preferred stock held of record on the books of the Phlx, subject to the applicable voting restrictions as described below.

Voting Limitations

In connection with the Demutualization, the Exchange proposes to include certain voting limitations as set forth in Article FOURTH(b)(iii)(B) of the proposed Certificate of Incorporation. The limitations will provide that, if any Person (as defined below) either alone or together with its Related Persons (as defined below), at any time owns of record or beneficially, whether directly or indirectly, more than 20% of the then outstanding shares of common stock (such shares of common stock in excess of such 20% limit being hereinafter referred to as ''Excess Shares''), that Person and its Related Persons will not have any right to vote, or to give any consent or proxy with respect to, the Excess Shares, and the Excess Shares will be deemed not to be present for the purposes of determining whether a quorum is present at any meeting or vote of the stockholders of the Exchange. For purposes of the proposed Certificate of Incorporation, ''Related Persons'' means: (i) With respect to any Person, all ''affiliates'' and ''associates'' of such Person (as such terms are defined in Rule 12b–2 under the Act);[22] (ii) with respect to any natural person constituting a ''member'' (as such term is defined in the Act) of the Exchange, any broker or dealer with which such member is associated; and (iii) any two or more Persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, holding, voting or disposing of shares of common stock. The term ''Person'' will be defined in the proposed Certificate of Incorporation to mean an individual, partnership (general or limited), joint-stock company, corporation, limited liability company, trust or unincorporated organization, and a government or agency or political subdivision thereof.

Notwithstanding the foregoing, a Person, either alone or together with its Related Persons, owning of record or beneficially, whether directly or indirectly, more than 20% of the then outstanding shares of common stock will be allowed to exercise voting rights, and give proxies and consents, with respect to those shares exceeding 20%, provided that: That Person (and its Related Persons owning any common stock) has delivered to the Board of Governors a notice in writing, not less than 45 days (or any shorter period to which the Board of Governors shall expressly consent) before the proposed exercise of its voting rights, of its intention to do so; and

• Before the intended exercise, the Board of Governors has adopted an amendment to the By-Laws adding a provision to expressly permit that Person's exercise of voting rights in excess of 20% and the amendment has been filed with the Commission as a proposed rule change under Section 19(b) of the Act[23] and has become effective.

The Board of Governors will not be permitted to adopt any amendment to the proposed By-laws described in the foregoing paragraph unless the Board of Governors has determined that: (x) The exercise of those voting rights by the Person in question and/or its Related Persons will not impair the Exchange's ability to discharge its responsibilities under the Act and the rules and regulations thereunder and is otherwise in the best interests of the Exchange and its stockholders; (y) the exercise of those voting rights by that Person and/or its Related Persons will not impair the Commission's ability to enforce the Act; and (z) that Person and/or its relevant Related Persons are not subject to any applicable statutory disqualification. In making those determinations, the Board of Governors may impose on the Person in question and its Related Persons such conditions and restrictions as it may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Act and the governance of the Exchange. Under the proposed Certificate of Incorporation, however, in no event will a Person who is a Member of the Exchange or a Person affiliated with a Member Organization be permitted to vote shares representing in excess of 20% of the outstanding common stock.

These voting limitations, together with the ownership and notification requirements described below, are intended to establish a system of supervision and control to effectively prevent acquisition of voting power of or assertion of control over the Exchange without the approval of both the Board of Governors and the Commission. In addition, the proposed change to the Certificate of Incorporation is designed to prevent any Member or Member Organization from dominating the Exchange.

Ownership Limitations and Notification Requirements

No Person, either alone or together with its Related Persons, will be allowed to own, of record or beneficially, directly or indirectly, more than 40% of the then outstanding shares of common stock of the Phlx and to the extent any Person (or its Related Persons) purports to own more than 40% of the then outstanding shares of common stock, that Person (and its Related Persons) will not be allowed to exercise any of the rights or privileges incident to the ownership of shares of common stock with respect to the shares exceeding the 40% limit, unless:

• That Person (as well as its Related Persons) has delivered to the Board of Governors a notice in writing, not less than 45 days (or such shorter period to which the Board of Governors expressly consents) before the acquisition of that ownership, of its intention to acquire the ownership; and

• Before the intended exercise, the Board of Governors has adopted an amendment to the By-Laws, adding a provision to expressly permit that Person's ownership in excess of 40% and the amendment has been filed with the Commission as a proposed rule

[22] 17 CFR 240.12b-2.

[23] 15 U.S.C. 78s(b).

change under Section 19(b) of the Act,[24] which has become effective.

The Board of Governors will not be permitted to adopt any amendment to the proposed By-laws described in the foregoing paragraph unless the Board of Governors has determined that: (i) Such acquisition of such ownership by such Person in question and/or its Related Persons will not impair the Exchange's ability to discharge its responsibilities under the Act and the rules and regulations thereunder and is otherwise in the best interests of the Exchange and its stockholders; (ii) such acquisition of such ownership by such Person and its Related Persons will not impair the Commission's ability to enforce the Act; and (iii) that Person and its relevant Related Persons are not subject to any applicable statutory disqualification. In making those determinations, the Board of Governors may impose on the Person in question and its Related Persons such conditions and restrictions as it may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Act and the governance of the Exchange.

In addition, no Member, either alone or together with its Related Persons, will be allowed to own, of record or beneficially, directly or indirectly, more than 20% of the then outstanding shares of common stock of the Phlx. To the extent any Member (or its Related Persons) purports to so own more than 20% of the then outstanding shares of common stock, that Member (and its Related Persons) will not be allowed to exercise any of the rights or privileges incident to the ownership of shares of common stock with respect to the shares exceeding the 20% limit.

In making those determinations, as in the case of a By-Law amendment expressly permitting the exercise of voting rights exceeding the 20% limit, the Board will be allowed to impose such conditions and restrictions on that Person and its Related Persons as it may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Act and the governance of the Phlx.

Unless the conditions specified above are met, if any Person exceeds the 40% threshold, either alone or together with its Related Persons, the Phlx will have the right, but not the obligation, to purchase from that Person and its Related Persons the shares of common stock that exceed the 40% threshold for a price equal to the par value of the shares of common stock.

If any Member exceeds the 20% threshold, either alone or together with its Related Persons, the Phlx will have the right, but not the obligation, to purchase from that Member and its Related Persons the shares of common stock that exceed the 20% threshold for a price equal to the par value of the shares of common stock. Also, unlike ownership by non-Members in excess of 40%, the proposed Certificate of Incorporation does not contain a proviso allowing for Members to own shares in excess of 20% with appropriate notification and By-law amendment sanctioned by the Commission.

Pursuant to Article FOURTH(b)(iv) and (v) of the proposed Certificate of Incorporation, any Person, either alone or together with its Related Persons, that at any time owns (whether by acquisition or by a change in the number of shares outstanding) of record or beneficially, directly or indirectly, 5% or more of the then outstanding shares of common stock will be required, immediately upon so owning 5% or more of the then outstanding shares of common stock, to give the Board of Governors written notice of that ownership and will be required to update the notice promptly after any ownership change. However, an updated notice will not have to be provided to the Board of Governors in the event of an increase or decrease of less than 1% (of the then outstanding shares of common stock) in the ownership percentage so reported (for that purpose, the increase or decrease will be measured cumulatively from the amount shown on the immediately preceding report) unless such increase or decrease of less than 1% results in the Person's owning more than 20% or more than 40% of the shares of common stock then outstanding (at a time when the Person so owned less than those percentages) or results in the Person's owning less than 20% or less than 40% of the shares of common stock then outstanding (at a time when the Person so owned more than those percentages). These proposed notification requirements will allow the Exchange to fulfill its reporting obligations to the Commission and to better monitor the voting and ownership limitations in the proposed Certificate of Incorporation described above.

Transfer Restrictions. Pursuant to Section 29–1 of the proposed By-laws, no stockholder of the Exchange may sell, transfer (by operation of law or otherwise) or otherwise dispose of any shares of Class A Common Stock except in blocks of 100 shares per sale, transfer or disposition. This transfer restriction is intended to ensure that the number of holders of common stock of the Exchange will not exceed the threshold for having to register the Exchange with the Commission under Section 12 of the Act.[25] The Exchange believes that, at least for some period of time after the Demutualization, the obligation of being a public reporting company would be overly burdensome on the Exchange as compared to the advantages conferred by that status.

In addition, Article XXIX of the proposed By-laws contains other restrictions typical for a Delaware stock corporation to ensure compliance with the Securities Act of 1933, as amended (the ''Securities Act''),[26] and to allow for efficient future marketing of the capital stock by an underwriter in connection with and after a potential initial public offering of shares of capital stock of the Exchange.[27] Accordingly, Section 29–2 of the proposed By-laws provides that after the Demutualization, no sale, transfer or other disposition of the capital stock of the Exchange may be effected except: (i) Pursuant to an effective registration statement under the Securities Act and in accordance with all applicable state securities laws; (ii) upon delivery to the Exchange of an opinion of counsel satisfactory to the Board that such sale, transfer or other disposition may be effected pursuant to a valid exemption from the registration requirements of the Securities Act and all applicable state securities laws; (iii) upon delivery to the Exchange of such certificates or other documentation as counsel to the Exchange shall deem necessary or appropriate in order to ensure that such sale, transfer or other disposition complies with the Securities Act and all applicable state securities laws; or (iv) pursuant to such procedures as the Chairman of the Board (or his designee) may adopt from time to time with respect to such transactions. In addition, no sale, transfer or other disposition of the capital stock of the Exchange may be effected by any holder of such stock until all amounts due and owing by such holder to the Exchange (whether any such amounts relate to such holder's status as a stockholder, Member, participant or Member (or participant) Organization of the Exchange or otherwise) shall have been paid in full.

In addition, Section 29–3 of the proposed By-laws provides that no stockholders may, if requested by the Exchange or any underwriter of equity securities of the Exchange, sell or

[24] 15 U.S.C. 78s(b).

[25] 15 U.S.C. 78l.

[26] 15 U.S.C. 77.

[27] It should be noted that no such transaction is currently contemplated at the time of this proposed rule change.

otherwise transfer or dispose of any shares of capital stock of the Exchange held by such stockholder during the 180-day period following the effective date of a registration statement of the Exchange filed under the Securities Act in respect of that class of capital stock. If requested by the Exchange or any such underwriters, each stockholder will be required to execute an agreement to the foregoing effect. The Exchange may impose stop-transfer instructions with respect to the shares (or securities) subject to the foregoing restriction until the end of said 180-day period.

Series A Preferred Stock/Phlx Member Voting Trust

Designation and Issuance of Series A Preferred Stock to Phlx Member Voting Trust/Trust Agreement. Article FOURTH (b) of the proposed Certificate of Incorporation will designate one share of preferred stock as the ''Series A Preferred Stock.'' The Series A Preferred Stock will have the sole power to (i) select the On-Floor Governors, and (ii) remove the On-Floor Governors in accordance with the procedures described below in connection with the removal of Governors.

As set forth in the Trust Agreement, at the effective time of the Merger, the Exchange will issue the share of Series A Preferred Stock to the Trust. Pursuant to Section 4.1 of the Trust Agreement, the Trustee of the Trust will have to vote the share of Series A Preferred Stock with respect to the designated nominees for election as On-Floor Governors, or the removal of On-Floor Governors, as the case may be, as directed by the vote of the Member Organization Representatives of Member Organizations entitled to vote, as described below.

The purpose of the Series A Preferred Stock is to establish a means by which the vote of the Member Organizations (in their capacities as such) can effectively elect and, subject to certain additional requirements described below, remove the five On-Floor Governors. Under Delaware law, the Governors of a stock corporation can be elected only by stockholders, and Member Organizations (in their capacities as such) will not be stockholders.

Dividend Rights. Because the Series A Preferred Stock will be issued only to enable the non-stockholder Member Organizations to vote indirectly for the On-Floor Governors, Article FOURTH (a)(i) of the proposed Certificate of Incorporation will provide that the Series A Preferred Stock will not have the right to receive any dividends.

Liquidation Preferences. Pursuant to Article FOURTH(a)(ii) of the proposed Certificate of Incorporation, upon liquidation of the Phlx the holder of the share of Series A Preferred Stock will be entitled to receive an amount equal to the par value of the share of Series A Preferred Stock (or $0.01) held by the holder after the payment of, or provision for, obligations of the Phlx and any preferential amounts payable to holders of any other class or series of outstanding shares of preferred stock.

Transferability. Article FOURTH(a)(iv) of the proposed Certificate of Incorporation will provide that the Series A Preferred Stock will not be transferable (whether by sale, pledge, operation of law or any other disposition) without the prior written consent of the Board. If the Board determines that it is in the best interests of the Exchange or its stockholders for any holder of the share of Series A Preferred Stock to sell the share to the Exchange or any other person, the holder will be required under Article FOURTH(a)(iii) of the proposed Certificate of Incorporation to effect the sale as directed by the Board.

B. Corporate Governance of the Demutualized Phlx

According to Article SIXTH of the proposed Certificate of Incorporation and Sections 4–1 and 4–4 of the proposed By-laws, the principal management of the Phlx after Demutualization will continue to rest with the Board and the Standing Committees of the Exchange.

To ensure compliance with the Act in the context of a demutualized Exchange, Article SIXTH of the proposed Certificate of Incorporation will provide that, in managing the business and affairs of the Phlx, the Governors will have to consider applicable requirements for registration as a national securities exchange under Section 6(b) of the Act,[28] including the requirements that (i) the rules of the Phlx be designed to protect investors and the public interest, and (ii) the Phlx be so organized and have the capacity to carry out the purposes of the Act and (except as otherwise provided in the Act or the rules and regulations thereunder) to enforce compliance by its Members and persons associated with its Members with the Act, the rules and regulations thereunder, and the rules of the Phlx.

[28] 15 U.S.C. 78s(b).

Board of Governors—Composition; Eligibility

Article SIXTH of the proposed Certificate of Incorporation, together with Article IV of the proposed By-laws, will set forth the required number and composition of the Board. Pursuant to Section 4–1 of the proposed By-laws, the composition of the Board will be the same as before the Demutualization and, as set forth in Section 4–3(b) of the proposed By-laws, will consist initially of the same individuals in office at the time of the Demutualization. According to Article SIXTH (a) of the proposed Certificate of Incorporation, the Board will continue to have a total of 22 Governors and be composed as follows:

- The Chairman of the Board, who will be the individual then holding the office of Chief Executive Officer (''CEO'');
- 11 Non-Industry Governors (of whom at least five will have to be public Governors); and
- 10 Industry Governors, of which five will have to be On-Floor Governors and five will have to be Off-Floor Governors).

The criteria set forth in the Exchange's current By-laws for eligibility of persons to serve as a Governor within each category of Governor will remain the same after Demutualization.

Board of Governors—Classification and Term Limits

According to Section 4–3(a) of the proposed By-laws, the Board will remain classified, with Governors serving staggered three-year terms. Governors (other than the Chairman) may serve for up to two consecutive three-year terms starting from the effective time of the Merger. In order to preserve continuity post-Demutualization, Section 4–3(b) of the proposed By-laws will provide that Governors who hold their positions at the effective time of the Merger will continue to hold those positions, in their respective classes, until their original terms expire and that the term limits will not take into consideration any service as Governor before the Demutualization but will only apply from and after the effective time of the Merger. The Exchange believes that this provision serves to ensure continuity in the governing body of the Exchange through such a significant corporate event as the Demutualization. The current Board of Governors has considered the Demutualization and the advantages and risks related to it, as well as the future strategy for the Exchange post-Demutualization, for a significant period of time.

Nomination and Election of Governors

The nomination and election procedures of the Phlx will be revised to ensure continuing fair representation for Members and Member Organizations in the context of the demutualized Exchange, while at the same time adapting the Exchange to its proposed status as a demutualized business corporation with stockholders. Generally, the new nomination and election structure of the Exchange will be as follows:

• The Non-Industry Governors, Off-Floor Governors and the Chairman of the Board will continue to be nominated by the Nominating and Elections Committee and will be elected by the holders of the common stock at meetings of stockholders, as described below.

• Stockholders will be permitted to make independent nominations of Non-Industry and Off-Floor Governors upon written notice of the nominations not less than 90 nor more than 120 days before the first Monday in February of each year (or such other date as the Board may establish). These nominations will be subject to review by the Nominating and Elections Committee.

Member Organizations, as described below, will designate the On-Floor Governors in accordance with the following procedures:

• On-Floor Governors will be nominated by the Nominating and Elections Committee from recommendations made: (i) By members of the Nominating and Elections Committee; or (ii) by any Member, participant or Member Organization Representative.

• Independent nominations by Member Organization Representatives will be valid only if signed by Member Organization Representatives representing no less than 50 votes.

• Member Organizations, through their authorized Member Organization Representative, will vote for designated On-Floor Governors among nominees so selected at the annual meeting of Members and Member Organizations.

• Nominees for Governors receiving the highest numbers of votes for the category of Governor for which they were respectively nominated as candidates will be declared the ''Designated Nominees'' for those offices. In case of a tie, the Nominating and Elections Committee will make the selection as to who among the tying nominees shall be designated.

• On-Floor Governors will then be elected by the Trust owning the share of Series A Preferred Stock based on the ''Designated Nominees'' elected by the Member Organization Representatives as described above.

Governors—Vacancies and Removal

In accordance with Section 3–8 of the proposed By-laws, vacancies (including vacancies created by increases in the size of the Board of Governors) will continue to be filled by the Nominating and Elections Committee, upon approval by a majority of the Governors. With respect to the removal of Governors, Article SIXTH(b) of the proposed Certificate of Incorporation and Sections 3–3 and 4–4 of the proposed By-laws will provide that Governors may be removed only for cause or, under certain circumstances, upon recommendation by a majority of the Board of Governors. In addition, Governors may be removed only by a 66⅔% vote of the group that elected them (*i.e.*, the holders of common stock, in the case of the Non-Industry or Off-Floor Governors, or the shares of Series A Preferred Stock as instructed by a vote of the Member Organization Representatives, in the case of the On-Floor Governors).

An On-Floor Governor may be removed at any annual or special meeting. A special meeting for the removal of an On-Floor Governor may be called by the Chairman of the Board of Governors or the Board of Governors or, only in the case of a special meeting of Member Organization Representatives for the purpose of voting on the removal of an On-Floor Governor, by the Member Organization Representatives representing a majority of the then issued and outstanding permits. If such a meeting is proposed to be called by Member Organization Representatives, such Member Organization Representatives must provide the Chairman written notice prior to calling any such meeting stating in reasonable detail the basis for, and the facts and circumstances purported to warrant, such removal of the relevant On-Floor Governor.

Committees

No changes will be made in Board committee structure or composition as part of the Demutualization process, except as follows:

• Pursuant to Sections 10–6 and 10–17 of the proposed By-laws, respectively, at least half of the Admissions Committee and the Foreign Currency Options Committee, respectively, will have to be Members, participants or persons affiliated with Member Organizations or participant organizations;

• Pursuant to Sections 10–20 and 10–16 of the proposed By-laws, respectively, at least half of the Options Committee and the Floor Procedure Committee, respectively, will have to be Members or persons affiliated with Member Organizations;

• Pursuant to Section 10–6 of the proposed By-laws, the Business Conduct Committee will share jurisdiction over the revocation of permits and foreign currency options participations in connection with disciplinary matters with the Admission Committee; and

• Pursuant to Section 10–7(a) and (b) of the proposed By-laws, certain term limits applicable to members of the Allocations Committees will be eliminated.

The existing Governance Documents do not include any specification as to the composition of the Admissions Committee, Foreign Currency Options Committee, the Options Committee or the Floor Procedure Committee and, therefore, do not require the committees to include any Industry Governors. Accordingly, the Proposed Rule Change will ensure participation of Industry Governors in each of these committees, thereby allowing Industry Governors to influence decisions made in vital areas of day-to-day trading operations and membership matters. The elimination of term limits respecting the Allocations Committees is intended to achieve consistency with most other committees, which do not have such limits.

Management and Executive Officers

The management structure of the Exchange, including its executive officers, will remain unchanged in the Demutualization in accordance with Article V of the proposed By-laws. The CEO position will continue to be a full-time position to be appointed by the Board, and the holder of this position will act as its Chairman. The person acting as CEO at the time of the Demutualization will be the only nominee for the position of Chairman of the Board, and will be elected by the votes of the holders of the common stock. The existing requirement that the CEO may not be a partner of a Member (or participant) Organization, nor an employee, agent, consultant, officer, director or stockholder of a Member (or participant) Organization will be retained. The CEO will appoint the other officers of the Exchange.

Limitation of Liability and Indemnification

Articles FIFTEENTH and SIXTEENTH of the proposed Certificate of

Incorporation and Section 4–18 of the proposed By-laws will include provisions substantially similar to the Article EIGHTEENTH of the existing Certificate of Incorporation, in accordance with Section 145 of the Delaware General Corporation Law. Such provisions eliminate the personal liability of Governors (and other persons mentioned below) for monetary damages for breach of fiduciary duty as a Governor, except for liability:

- For any breach of the Governor's duty of loyalty to the Phlx or its stockholders;
- For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- Under Section 174 of the Delaware General Corporation Law regarding unlawful dividends and stock purchases; or
- For any transaction from which the Governor obtained an improper personal benefit.

The proposed Certificate of Incorporation and By-laws will further permit the Phlx to indemnify to the fullest extent permitted under and in accordance with the laws of the State of Delaware any Governor (or director) or officer of the Phlx, and any person that is or was serving at the request of the Phlx as a Governor, committee member or in-house legal counsel, officer, director (or person in similar position), employee or agent of another corporation or of a partnership (general or limited), limited liability company, joint venture, trust or other enterprise or business entity, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with any action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Phlx, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. The Phlx may also pay the expenses of indemnified persons incurred in defending a suit or proceeding in advance of the final disposition of the suit or proceeding. The proposed Certificate of Incorporation will also permit the Phlx to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in that capacity. The Exchange believes that these indemnification provisions are substantially similar to those generally employed by other Delaware stock corporations and the scope of the persons covered is intended to continue to attract and retain qualified personnel.

C. Permits and Trading Rights

Issuance of Permits and Application Process

Under the proposed Plan of Demutualization, access to the Exchange facilities and the right to trade will be conferred by the newly-issued permits rather than by ownership or leasing of Seats of the Exchange. As discussed above, trading of foreign currency options will continue to be allowed through the existing FCO participations, but, after Demutualization, will also be permitted through permits, as will be provided in proposed Rule 908(c)(i).

Proposed Rule 971 will provide that all ETPs and ETP use agreements will terminate with immediate effect as of the close of trading on the day the Merger becomes effective without any further action on the part of any party thereto. Similarly, proposed Rule 971 will also provide that all leases of Seats and all leases and A–B–C agreements with respect to such Seats, will terminate with immediate effect as of the close of trading on the day the Merger becomes effective without any further action on the part of any party thereto. All provisions in the Certificate of Incorporation, By-laws and Rules relating to the transfer or lease of a Seat or A–B–C agreement, and all defined terms related thereto (such as ''Lessor'' and ''Lessee'') will be amended as necessary to reflect that, after the Demutualization, these provisions and defined terms will only apply to FCO participations. These provisions will no longer be applicable to permits, because permits (including the Series A–1 Permits) will not constitute property that can be transferred by its holder (except within the same member Organization). Similarly, the provisions relating to ETPs, such as Rule 23, will be deleted.

To provide an orderly transition from Seats to permits, proposed Rule 972 will allow each Member (including, without limitation, each holder of an equity trading permit), inactive nominee and Member Organization holding that status immediately before the effective time of the Merger that, at that time, is not subject to any suspension of that status, to maintain that status. All Members and ETP holders who fulfill the requirements described in the previous sentence will receive Series A–1 Permits immediately upon the Demutualization.

Proposed Rule 972 will also provide that existing Member Organizations will maintain their status for a period of 15 days following the Merger. Each Member Organization, however, will have to provide to the Admissions Committee and the Exchange, as applicable, before the end of the 15-day period, the following:

- The security deposit or alternative compliance with proposed Rule 909 (the ''security requirement'') (as described below);
- The form to be filed by the Member Organization's qualifying permit holder; and
- The designation of the Member Organization's Member Organization Representative in the form prescribed by the Exchange.

If a Member Organization fails within that period to comply with the security requirement and/or to furnish the form to be filed by the Member Organization's qualifying Member, the Member Organization's status as such will immediately be suspended. If a Member Organization fails to designate a Member Organization Representative, the Member Organization may not exercise any voting rights with respect to any permits held by persons who are associated with the Member Organization.

Classes or Series of Trading Permits

Immediately after the Demutualization, pursuant to Section 12–1 of the proposed By-laws and proposed Rule 908, there will be only one series of permit, called the ''Series A–1 Permit,'' which will confer upon its holder all the rights and privileges of a Member of the Exchange. An individual will be allowed to hold a Series A–1 Permit if he or she meets the qualification criteria that will be set forth in Article XII of the proposed By-laws and Rules 901 and 908 and/or may be imposed by the Admissions Committee (which criteria the Exchange intends will remain largely the same as they were before the Demutualization), including the requirements that a Member be an individual at least 21 years of age and be associated with a Member Organization.[29] Pursuant to Sections 12–1 and 12–4 of the proposed By-laws and proposed Rule 908(b), Series A–1 Permits will be limited or unlimited in number and may be issued from time to time by the Exchange, as determined by the Board in its sole discretion.

[29] Under Sections 12–2 and 12–4 of the proposed By-laws, Stock Clearing Corporation of Philadelphia (''SCCP''), as an eligible corporation, may hold a permit but will continue not to be subject to the qualification criteria applicable to persons seeking a permit. SCCP, a subsidiary of the Phlx, is a registered clearing agency.

After Demutualization, Section 12–1 of the proposed By-laws will empower the Board to:

- Authorize the issuance of an unlimited or restricted number of additional permits;
- Terminate or eliminate any class or series of permits; and
- Create additional classes or series of permits.

Any of these actions, however, will continue to be subject to Commission review and/or approval. In accordance with Section 12–3 of the proposed By-laws, no person will be allowed to hold more than one permit.

Pursuant to proposed Rule 971, separate equity trading permits currently issued and outstanding will be eliminated and be replaced by the Series A–1 Permits described above.

Qualifications

Initially, except to the extent provided in applicable product and/or activity criteria set forth in the proposed Rules, qualifications and other requirements for Members to conduct certain activities (*e.g.*, to act as a specialist or a floor broker), to trade certain products (*e.g.*, special capital requirements for specialists for certain equity securities, allocation of books and Registered Options Trader assignments) or to use specific facilities of the Exchange (*e.g.*, testing requirements for use of certain Exchange technology) will remain largely the same as they were before the Demutualization.

Member Organizations and Member Organization Representatives

As under the current structure, a Member will continue to be permitted to be associated with more than one Member Organization.[30] In accordance with proposed Rule 908(c)(ii), each holder of a permit will be obliged, however, to designate only a single eligible organization with which the Member is associated as the Member's ''primary affiliation'' for the purposes of voting, as will be provided in Article III of the proposed By-laws. A Member will be allowed to qualify as a Member Organization only the entity the Member has designated as his or her primary affiliation. Accordingly, every Member shall have one primarily-affiliated Member Organization and may have more than one associated Member Organization.

Unlike the current Phlx regime, after Demutualization, individual Members will not directly be accorded voting rights. Rather, in regard to the election and removal of On-Floor Governors, Member Organizations will be entitled to exercise voting rights in respect of the permits held by those Members who have designated the Member Organization as their primary affiliation. Specifically, pursuant to proposed Rule 921 and Section 12–8 of the proposed By-laws, each Member Organization will have to register with the Exchange and designate a single individual as its ''Member Organization Representative.'' The concept of a Member Organization Representative is designed to facilitate the post-Demutualization voting process. Permit holders, or Members, themselves will not exercise any voting rights. Instead, voting rights associated with a permit will be exercised by the Member Organization with which the Member is primarily associated and, as noted above, will be exercised by the Member Organization's Member Organization Representative. The Member Organization Representative will be the only person who may exercise the voting rights in respect of the Member Organization in respect of matters on which Member Organizations may vote. Proposed Rule 921 will also provide that a Member Organization Representative will have to accept the designation by filling out a registration documentation required by the Exchange.

Pursuant to proposed Rules 921 and 972, with the exception of certain provisions in proposed Rule 921(c) retaining the existing concept of ''inactive nominees'' in order to alleviate hardships, failure to qualify a Member Organization Representative at any time will prevent a Member Organization from exercising any rights in connection with the Exchange, including the right to vote for designated On-Floor Governors as described below.

According to proposed Rule 924, Members[31] will be liable with respect to any fees, fines, dues, penalties or other amounts imposed by the Exchange in connection with such Member's permit or any activities conducted in connection with such permit, whether or not any such obligation was incurred on behalf of his account or on behalf of his Member Organization. In addition, proposed Rule 924 will provide that Member Organizations will be liable with respect to any fees, fines, dues, penalties or other amounts imposed by the Exchange in connection with such Member Organization and any Member associated with such Member Organization in connection with a permit or any activities conducted in connection with such permit by such member on behalf or for the account of such Member Organization. Under proposed Rule 924(b), similar to the rule in effect today, Member Organizations will have the ability to allocate responsibilities among themselves regarding Members associated with more than one Member Organization, provided that any such arrangements have been provided to the Exchange in the form required by it at least 30 days prior to their desired effectiveness.

Security Requirement

According to proposed Rule 909, each Member Organization will have to provide and maintain security to the Exchange (or alternative compliance) for the payment of any claims owed to the Exchange, to SCCP, and to Members and/or other Member Organizations. Currently, Section 14–5 of the By-laws provides that the Exchange (through the Admissions Committee) may dispose of any Seat upon written notice if amounts owed to the Exchange exceed a certain threshold amount and have been outstanding for at least one year, which possibility will be eliminated in connection with the elimination of Seats in the Demutualization. Accordingly, the Exchange proposes the security requirement to protect itself in the case of non-payment of certain amounts owed. The proposed security requirement will consist of:

(i) Excess net capital of at least the amount required by the Exchange, as will be published by the Exchange from time to time;[32]

(ii) an acceptable guaranty by a clearing Member Organization that is acceptable to the Exchange; or

(iii) a deposit with the Exchange in an amount not to exceed $50,000.

The amount of the security for a Member Organization will remain the same regardless of the number of permits issued to affiliates of the Member Organization. If a Member Organization's registration is terminated and no Members remain associated with the Member Organization, the Exchange will be permitted to apply the proceeds of any remaining security to the payment of any amounts owed by or on behalf of the Member Organization to, or claimed by, the Exchange, to SCCP, and to other Member Organizations, and any balance of the security thereafter remaining will be returned to the Member Organization or, in the case of

[30] *See* Rule 793.

[31] This rule also applies to FCO participants and participant organizations with respect to FCO participations.

[32] In accordance with the By-laws and Rules, the Member Organization will be subject to monthly reporting obligations to evidence the maintenance of that excess net capital requirement.

a guaranty, the guaranty will be returned to the guarantor Member Organization.

The proposed By-laws will also provide in Section 12–9(b) that following the Demutualization, Members, Member Organizations and holders of FCO participations will have to pledge in writing to abide by the proposed Certificate of Incorporation, the proposed By-laws, the proposed Rules and any other rules and regulations of the Exchange.

Voting Rights

After the Demutualization, holders of permits will not have any voting rights. Member Organizations will have the right to:

- Designate the five On-Floor Governors for election to the Board in accordance with Section 3–12 of the proposed By-laws;
- Remove the On-Floor Governors in accordance with Sections 3–2(c) and 3–3 of the proposed By-laws (together with the right to designate the On-Floor Governors, the ''Designation Rights''); and
- Designate the On-Floor Vice-Chair in a contested election as described below.

Each permit will carry one vote. As discussed above, the vote may be exercised only by the qualified Member Organization Representative of a Member Organization designated by a holder of a permit as its primary affiliation.

The Designation Rights will be exercised in accordance with the following procedure:

- Based on input from the membership or others, the Nominating and Elections Committee will propose a slate of qualified On-Floor Governors;
- In addition, the Member Organization Representatives, representing at least 50 permits, will be permitted to propose qualified alternative candidates;
- The Member Organization Representatives, at an annual meeting of Members and Member Organizations, will then elect the designated On-Floor Governors from among the Nominating and Elections Committee's slate and any qualified individuals nominated by Member Organization Representatives in accordance with the nomination procedures.

The winners of this election will then be eligible for designation as On-Floor Governors. In compliance with Delaware corporate law, the designated On-Floor Governors will be formally elected by the Trust that holds the single outstanding share of Series A Preferred Stock in accordance with Article FOURTH(a)(iii) of the proposed Certificate of Incorporation.

Contested Election of the On-Floor Vice Chairman

With respect to the election of the On-Floor Vice Chairman, Section 4–2 of proposed By-laws will provide that, if there is a contest for the position of On-Floor Vice Chairman of the Board, the On-Floor Vice Chairman of the Board may be selected from the On-Floor Governors by a vote of the Member Organization Representatives, as promptly as possible after the annual meeting of stockholders at a special meeting of Members and Member Organizations called for that purpose.

Voting Concentration Limits

In order to prevent any group of Members of Member Organizations from dominating elections of the Member Organization Representatives, the proposed By-laws will provide in Section 3–12(c) that if any Member Organization, directly or indirectly, possesses the right to vote more than 20% of the then outstanding permits, that Member Organization will not have any right to vote, or to give any consent or proxy with respect to, any permits exceeding the 20%, and the excess permits will not be considered present for the purposes of determining whether a quorum is present at any meeting or vote of the Members or Member Organizations, and will not be entitled to vote in determining the number of permits required for a quorum or to be voted for approval of or to give consent with respect to any matter presented to the Members or the Member Organizations.

Member and Member Organization Meetings and Actions

Pursuant to Section 3–2 of the proposed By-laws, annual meetings of Members and Member Organizations will be held on the second Monday in March of each year to designate nominees for On-Floor Governors. Except as described above with respect to a special meeting called for the purpose of removing an On-Floor Governor, special meetings of Members or the Member Organization Representatives may be called at any time only by the Chairman of the Board or by a majority of the Board.

At all meetings of Members and Member Organizations, each Member Organization Representative may cast his vote in person or by proxy, provided that no action will become effective unless there shall have been voted a majority of the number of permits outstanding at such time, not including any Excess Permits, as defined in Section 3–12(c) of the proposed By-laws. Each Member Organization Representative may cast the number of votes equal to the number of permits held by Members having designated the Member Organization Representative's Member Organization as its primary affiliation (subject to the voting restrictions described above).

Section 3–11 of the proposed By-laws will provide that notice of any meeting of Members and Member Organizations must be given to each Member Organization Representative entitled to vote at such meeting not less than 10 days nor more than 50 days before the date of the meeting.

Term and Termination of Permits

Pursuant to proposed Rule 908(e), the holder of a permit will be allowed to terminate the permit at any time upon written notice to the Exchange. The Exchange will be allowed to terminate any individual permit in accordance with the By-laws and Rules of the Exchange only upon:

- The non-payment of any dues, foreign currency options users' fees, fees, fines, penalties, other charges, and/or other monies due and owed the Exchange;
- The insolvency of a Member or Member Organization (or if the Business Conduct Committee has determined the Member or Member Organization to be financially unsafe to continue trading); or
- The Exchange's imposition of a disciplinary sanction.[33]

The terminating permit holder and each Member Organization with which the holder is associated will remain responsible for all obligations of the terminating Member, including, without limitation, all applicable dues, fees, charges, fines, penalties and other obligations arising from the holding or use of a permit before its termination.

Pursuant to proposed Rule 908(f), the Exchange will be able to terminate the entire series of Series A–1 Permits on no less than 60 days' notice to the permit holders. If, however, within six months after any such termination of the entire series of Series A–1 Permits, the Exchange issues any other class or series of permit with respect to any securities product previously covered by the Series A–1 Permit, any permit holder of a terminated Series A–1 Permit, who meets the applicable eligibility requirements with respect to such new class or series of permit, will be entitled to receive on terms no less favorable

[33] *See* Section 14–1 and Articles XVII and XVIII of the proposed By-laws.

than those applicable to other persons such new class or series of permit so long as such permit holder will trade with such new class or series of permit such product in the same capacity as he had done with a Series A–1 Permit before such termination (but only if he had continuously traded such product in such capacity for at least one year prior to such termination). In addition, such holder of the terminated Series A–1 Permit will be required to apply for such new permit within 30 days of the later to occur of (i) the termination of the series of Series A–1 Permits or (ii) the initial issuance of the new class or series of permit.

Transfer of Permits

Section 12–1(b) of the proposed By-laws, as well as proposed Rule 908(h) will also provide that, unless the Board resolves otherwise, no permit may be sold, transferred (by operation of law or otherwise), leased or otherwise encumbered by any person to whom such permit is issued by the Exchange. However, proposed Rule 908(h) provides that the existing concept of ''inactive nominees'' will be retained to alleviate certain administrative hardships for Member Organizations, such that a permit can be transferred to and from an inactive nominee.

Disciplinary Actions and Appeal Process

Enforcement of any disciplinary action and appeals against the same will be conducted in the same manner as before the Demutualization.

Fees, Dues and Charges

Currently, the Board of Phlx has the authority to set fees, dues and other charges [34] in its sole discretion, subject to the requirements under the Act, including filing requirements. Pursuant to lease agreements, Members who lease Seats from Owners are ordinarily required to make lease payments in respect of the lease.

After the Demutualization, the Board of the Phlx will continue to have the authority to set Member fees, dues and other charges in its sole discretion in accordance with Section 14–1 of the proposed By-laws. However, seat leases and lease payments (other than with respect to FCO participations) will no longer exist. All other Exchange charges in effect at the time of the Demutualization will continue to apply until changed.[35] Of course, all fees are subject to change, both before and after Demutualization, subject to approval by the Board and filing with the Commission.

In connection with the Demutualization, the Exchange proposes to make certain corresponding changes to the defined terms applicable to its By-laws and Rules. These changes, reflected in Section 1–1 of the existing and the proposed By-laws, as well as in Rules 1 through 21 of the existing Rules and 1 through 22 of the proposed Rules, are generally [36] designed to adapt such defined terms to the proposed post-Demutualization structure of the Exchange, as described herein.

ii. Summary of Non-Demutualization-Related Changes

Certain aspects of the Proposed Rule Change are not directly related to the Plan of Demutualization. These changes are principally of a clean-up nature, intended to delete obsolete provisions that relate mainly to membership, in the interest of clarity and to avoid confusion post-Demutualization.

Definition of Member Firm, Member Corporation and Member Organization

The Exchange proposes to harmonize the use of the defined terms Member Firm, Member Corporation and Member Organization throughout its By-laws and Rules by eliminating the separate defined terms ''Member Firm'' (Rule 3 of the existing Rules) and ''Member Corporation'' (Rule 4 of the existing Rules) and amending the defined term ''Member Organization'' (Rule 6 of the existing Rules and Rule 3 of the proposed Rules) to include any Member Firm and Member Corporation, as they were previously defined. Wherever such defined terms appear in either the By-laws or the Rules, the Exchange proposes to make the corresponding change to Member Organization. The Exchange believes that these changes eliminate certain definitional inconsistencies.

Convertible Memberships

The Exchange proposes to delete the parts of Article XII of the existing By-laws that relate to ''convertible memberships'' on the Exchange, together with any references to any classes of memberships that existed in connection with the Exchange's pre-1975 status as an unincorporated entity. No such convertible membership has been outstanding at any time and any transitional rules relating to the Exchange's previous unincorporated status are obviously no longer required.

Commissions

The Exchange proposes to delete Article XIX of the existing By-laws in its entirety, which relates to certain requirements for fixed rates of commissions for transactions effected on or by the use of the facilities of the Exchange. The Exchange believes these provisions do not comport with Section 6(e) of the Act.[37] To avoid confusion, they should, therefore, be deleted without replacement. The Exchange also proposes to delete the related Rule 248.

Market-Maker Membership

The Exchange proposes to delete Article XXIII of the existing By-laws, relating to Market-Maker Memberships, in its entirety. No such Market-Maker Membership has been issued since the 1970s and none is currently outstanding. Following the Demutualization, the Exchange is not initially proposing to create a specific permit for market-makers; any rights and privileges required to engage in market making on the Exchange will initially be granted through the proposed Series A–1 Permit. The Exchange also proposes to delete the related Rules 456–459. These deletions are intended to avoid confusion with respect to these unused membership-related provisions.

Exchange Options Trading

The Exchange proposes to delete Article XXVI of the existing By-laws, relating to Exchange options trading through a classification of membership named ''Options Membership'' in its entirety. No such Options Membership has at any time been issued and outstanding. Following the Demutualization, the Exchange is not initially proposing to create a specific permit to trade options on the Exchange; any rights and privileges required to engage in trading options on the Exchange will initially be granted through the proposed Series A–1 Permit. Accordingly, this deletion is also intended to avoid confusion.

References to the Exchange's Constitution

The Exchange proposes to delete references to the ''Constitution of the Exchange'' from the Rules 111, 201A

[34] According to the Exchange, the existing and proposed By-laws and Rules may refer to ''dues, fees and other charges'' to cover various types of monies owed to the Exchange, however, no substantive difference is intended.

[35] Separately, with the elimination of Seats and leases thereof, the Exchange intends to file a proposed rule change to adopt fees applicable to Series A–1 Permits and to make conforming changes to its fee schedule as a result of the Demutualization.

[36] See the discussion of the changes to the definitions of Member Organization, Member Firm and Member Corporation below.

[37] 15 U.S.C. 78f(e).

and 960.2 as well as from the commentary to Rule 803. Where applicable, the references will be either deleted in their entirety or will be replaced by references to the Certificate of Incorporation. The Exchange has not had a constitution since its incorporation in 1972 and, since that time, has been governed exclusively by its Certificate of Incorporation and By-laws.

References to the Exchange's President

The Exchange proposes to delete references to the Exchange's ''President'' from the Rules and replace such references with ''Chairman of the Board of Governors.'' The Exchange has not established the position of a President and has no immediate plans to establish such a position after the Demutualization.

Participation in Mandatory Decimalization Testing

The Exchange proposes to delete Rule 650 in its entirety which relates to the mandatory participation of Members in certain programs concerning the testing of the Exchange's system in connection with decimalization. Such tests have been performed, and, therefore, Rule 650 has become obsolete.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [38] in general and, in particular, furthers the objectives of Sections 6(b)(2),[39] 6(b)(3),[40] 6(b)(5) [41] and 11(A)(a)(1) [42] of the Act. Specifically, after careful consideration, the Exchange believes that the proposed permit structure to be established in connection with the Plan of Demutualization should further general access for any registered broker or dealer or natural person associated with a registered broker or dealer to become a member of the Phlx in accordance with Section 6(b)(2) of the Act.[43] Under its current structure, Seats on the Exchange, to which the right to be a member of the Exchange is linked, are limited in number to 505.[44] Under Section 12–1 of the proposed By-laws, the Exchange will be entitled to issue a potentially unlimited number of permits [45] to qualified individuals. Consequently, the potential availability of a number of permits greater than 505 would allow more qualified brokers and dealers to become Phlx Members.

The Exchange further believes that the proposed provisions of the Certificate of Incorporation, the By-laws and the corresponding provisions of the Trust Agreement should assure the fair representation of its Members and Member Organizations in the selection of its Governors and the administration of its affairs by providing that the On-Floor Governors shall be elected by the Trust as a holder of the share of Series A Preferred Stock at the direction of the Member Organization Representatives who represent both the Member Organization that designated them, and, indirectly, the Member Organization's primarily affiliated Member(s). This election process, together with the composition of the Board and the various standing committees of the Board, should ensure fair representation by both upstairs Member Organizations and the Exchange floor in accordance with Section 6(b)(3) of the Act.[46] Article SIXTH of the proposed Certificate of Incorporation, together with Section 4–1 of the proposed By-laws, will continue to provide for five Governors of the Exchange to be ''On-Floor'' Governors, which will consist of:

- Two Governors who are industry Governors and are members [47] primarily engaged in business on the Exchange's equity floor;
- One Governor who is an industry Governor and is a Member primarily engaged in business as a specialist on the Exchange's equity options floor;
- One Governor who is an industry Governor and is a Member primarily engaged in business as a Registered Options Trader on the Exchange's equity options floor; and
- One Governor who is an industry Governor and is a Member primarily engaged in business on the Exchange's equity options floor as a floor broker.

There will also be five ''Off-Floor'' Governors who are industry Governors and are general partners, executive officers (vice president or above), or Members (or participants) associated with Member (or participant) Organizations which conduct a non-member or non-participant public customer business and shall individually not be primarily engaged in business activities on the Exchange Floor. These Off-Floor Governors will be elected by the owners of the common stock of the Exchange. In addition, pursuant to the proposed By-laws, at least half of the members [48] of the Admissions Committee and the Foreign Currency Options Committee will be required to be Members, participants or persons affiliated with Member Organizations or participant organizations, and at least half of the members of the Options Committee and the Floor Procedure Committee will be required to be Members or persons affiliated with Member Organizations, which should ensure Member participation and influence over core governance decisions of the Exchange in areas of importance to the Members and Member Organizations. The Exchange also believes that the proposal is consistent with Section 6(b)(5) of the Act,[49] in that the Exchange will continue to offer a marketplace for the trading of securities that is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism for a free and open market and a national market system, as well as to protect investors and the public interest.

In general, the Exchange believes that the Plan of Demutualization is consistent with the findings of Congress expressed in Section 11A of the Act [50] that, *inter alia*, the securities markets are an important national asset which must be preserved and strengthened and that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions. Under its current mutual structure, the Exchange will be severely hindered in its ability to address the financial and competitive challenges it is facing today. To keep pace with technological and other market changes, develop new products, react swiftly to competitors while continuing to comply with its statutory requirements as a self-regulatory organization, the Exchange believes that it will depend on both internal and external sources of capital. The Plan of Demutualization removes obstacles to third-party investments by creating a

[38] 15 U.S.C. 78f(b).

[39] 15 U.S.C. 78f(b)(2).

[40] 15 U.S.C. 78f(b)(3).

[41] 15 U.S.C. 78f(b)(5).

[42] 15 U.S.C. 78kA(a)(1).

[43] 15 U.S.C. 78f(b)(2).

[44] One of the 505 Seats is held by SCCP pursuant to Section 12–3 of the existing By-laws and, therefore, is not otherwise available.

[45] Each series of permits issued by the Exchange may either be restricted or unlimited in number, as determined by the Exchange.

[46] 15 U.S.C. 78f(b)(3).

[47] Solely in connection with these composition requirements, ''members'' in each case includes general partners, executive officers (vice president and above) or Members associated with Member Organizations primarily engaged in the relevant business on the Exchange.

[48] Here, the term ''member'' is used merely to refer to persons serving on a committee.

[49] 15 U.S.C. 78f(b)(5).

[50] 15 U.S.C. 78k(A).

''currency'' (common stock or preferred stock in a for-profit corporation) for the investments, subject to the control and approval of the Commission in the case of preferred stock and if certain ownership or voting thresholds are exceeded. On the other hand, the Plan of Demutualization and the new permit structure also facilitate the fair and reasoned assessment of Members and Member Organizations through a targeted permit fee structure and a potentially unlimited number of Permits.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

First, on September 29, 2003, a letter addressed to the Exchange's Board questioned the motives and necessity to demutualize.[51] Thereafter, on October 22, the same persons requested the ''demutualization package'' and criticized the scheduling of multiple (as opposed to a single) Member and Owner meetings.[52] The Exchange's response letter explained that the materials would be distributed by the next day and that multiple meetings were intended as a scheduling convenience to permit more Members and Owners to attend.[53] Lastly, although not a comment to the Exchange directly, a letter dated October 30, 2003, addressed to Members/Owners of the Phlx, was circulated, stating, among other things, that the Plan of Demutualization is not fair, did not involve Member or Owner input, and urges Members and Owners to vote against it.[54] It also criticizes the elimination of the ability of Members to propose By-law changes and states that the Plan rewards management with up to 10% of the outstanding stock. The Exchange determined to respond to the letter, explaining, among other things, that the reason for the elimination of the Members' right to petition changes to the By-laws is that Delaware law requires that stockholders amend the By-laws. Furthermore, the Exchange's response explains that the 10% limitation is a ceiling, and not a guarantee.

[51] *See* letter from Joseph D. Carapico, Andrew W. Snyder and Richard B. Feinberg, Penn Mont Securities, to the Board, dated September 29, 2003.

[52] *See* letter from Joseph D. Carapico, Andrew W. Snyder and Richard B. Feinberg, Penn Mont Securities, to Murray L. Ross, Secretary, Phlx, dated October 22, 2003.

[53] *See* letter from Murray L. Ross, Secretary, Phlx, to Joseph D. Carapico, Andrew W. Snyder and Richard B. Feinberg, Penn Mont Securities, dated October 22, 2003.

[54] *See* letter from Richard B. Feinberg, dated October 30, 2003.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR-Phlx-2003–73 and should be submitted by December 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[55]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30062 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

[55] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3558]

State of West Virginia; Amendment #1

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective November 22, 2003, the above numbered declaration is hereby amended to include Boone, Calhoun, Clay, Fayette, Gilmer, Greenbrier, Marion, McDowell, Mercer, Monongalia, Monroe, Raleigh, Summers, Webster, Wetzel and Wyoming Counties as disaster areas due to damages caused by severe storms, flooding and landslides occurring on November 11, 2003, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Doddridge, Harrison, Lewis, Marshall, Pocahontas, Preston, Randolph, Ritchie, Taylor, Tyler, Upshur and Wirt in the State of West Virginia; Monroe County in the State of Ohio; Fayette and Greene Counties in the Commonwealth of Pennsylvania; and Alleghany, Bath, Bland, Buchanan, Craig, Giles and Tazewell Counties is the Commonwealth of Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

The number for economic injury for the Commonwealth of Pennsylvania is 9Y1900 and for the Commonwealth of Virginia is 9Y2000.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 20, 2004, and for economic injury the deadline is August 23, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 25, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–30098 Filed 12–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3559]

Commonwealth of Puerto Rico; Amendment #1

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective November 24, 2003, the above numbered declaration is hereby

amended to include the municipalities of Arroyo, Canovanas, Fajardo, Loiza, Naguabo, Toa Baja and Yabucoa as disaster areas due to damages caused by severe storms, flooding, mudslides and landslides beginning on November 10, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous municipalities of Bayamon, Carolina, Catano, Dorado, Humacao, Juncos and Toa Alta may be filed until the specified date at the previously designated location. All other municipalities contiguous to the above named primary municipalities have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 20, 2004, and for economic injury the deadline is August 23, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 28, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–30097 Filed 12–2–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 4547]

Update on Current Universal Postal Union Issues

AGENCY: Department of State.

ACTION: Notice of briefing.

The Department of State will host a briefing on Thursday, December 18, 2003, to provide an update on current Universal Postal Union issues, including work leading up to and preparations for the UPU Congress to be held in Bucharest, Romania from September 15 to October 5, 2004.

The briefing will be held from 1 p.m. until approximately 4 p.m., on December 18, in Room 1207 of the Department of State, 2201 C Street, NW., Washington, DC. The briefing will be open to the public up to the capacity of the meeting room (40 persons).

The briefing will provide information on the results of the October 2003 session of the UPU Council of Administration and concurrent meetings of the UPU Postal Operations Council. Special attention will be paid to several major issues discussed at these meetings, including terminal dues, extra-territorial offices of exchange, and the status of proposals to create a UPU Consultative Committee whose membership is primarily from the private sector. Information will also be provided about publication of a study of the remail provisions of Article 43 of the UPU Convention and the status of United States preparations for the 2004 UPU Congress in Bucharest. The briefing will be chaired by Deputy Assistant Secretary Terry Miller of the Department of State. Entry to the Department of State building is controlled and will be facilitated by advance arrangements. In order to arrange admittance, persons desiring to attend the briefing should, no later than noon on December 17, 2001, notify the Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State, preferably by fax, providing the name of the meeting and the individual's name, Social Security number, date of birth, professional affiliation, address and telephone number. The fax number to use is (202) 647–8902. Voice telephone is (202) 647–1044. This request applies to both government and non-government individuals.

All attendees must use the main entrance of the Department of State at 23rd Street between C and D Streets, NW. Please note that under current security restrictions, C Street is closed to vehicular traffic between 21st and 23rd Streets. Taxis may leave passengers at 21st and C Streets, 23rd and C Streets, or 22nd Street and Constitution Avenue. One of the following means of identification will be required for admittance: any U.S. driver's license with photo, a passport, or any U.S. Government agency identification card.

Questions concerning the briefing may be directed to Mr. Donald Booth at (202) 647–2752 or via email at *boothde@state.gov.*

Dated: November 21, 2003.

Donald Booth,

Director, Office of Technical and Specialized Agencies, Department of State.

[FR Doc. 03–30124 Filed 12–2–03; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–16471]

Notice of Request To Renew Approval of an Information Collection: OMB Control No. 2126–0011 (Commercial Driver Licensing and Test Standards)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice announces that FMCSA intends to submit a request to the Office of Management and Budget (OMB) for renewed approval of the information collection described below. This information collection is needed to ensure that motor carriers and the States are complying with notification requirements for obtaining information about licensing, violations, convictions, and disqualifications within certain time periods as required by the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended. This notice is required by the Paperwork Reduction Act.

DATES: Your comments must be submitted by February 2, 2004.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* Be sure to include the docket number appearing in the heading of this document on your comment. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you would like to be notified when your comment is received, you must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Finn, (202) 366–0647, Office of Safety Programs, State Programs Division (MC–ESS), Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Commercial Driver Licensing and Test Standards.

OMB Number: 2126–0011.

Background: In 1986, Congress enacted the Commercial Motor Vehicle Safety Act (Public Law 99–570, Title XII, 100 Stat. 3207–170) among other things, to establish minimum standards for testing and licensing persons who want to operate a commercial motor vehicle (CMV) by weight or use category, and requiring drivers to have a single commercial driver's license (CDL) and driving history record.

Under 49 CFR 383.5, a CMV is defined as a motor vehicle or combination of motor vehicles which:

(a) Has a gross combination weight rating of 11,794 or more kilograms (kg) (26,001 or more pounds (lbs) inclusive of a towed unit with a gross vehicle weight rating (GVWR) of more than 4,536 kg (10,000 lbs)); (b) has a GVWR of 11,794 or more kg (26,001 or more lbs); (c) is designed to transport 16 or more passengers, including the driver; or (d) is of any size and is used to transport hazardous materials as hazardous materials are defined in 49 CFR 383.5.

The CMVSA requires a driver to notify both their employer and the licensing official in the driver's State of licensure of all violations of any State or local laws relating to traffic control (except parking violations). A person whose CDL is suspended, revoked, or canceled by a State, or who is disqualified from operating a CMV for any period, also must notify their employer of such actions. A person applying for employment as a CMV driver also must notify prospective employers of their employment history as a CMV driver for the previous ten years.

Pursuant to 49 U.S.C. 31309, the Secretary of Transportation (Secretary) must maintain an information clearinghouse and depository of information about the issuance of a license, and identification and disqualification of CMV operators, in conjunction with 49 U.S.C. 31106. The Secretary may consult with the States in carrying out this section. States must certify that they are in compliance with the CDL program. If a State does not substantially comply with these requirements, the FMCSA may penalize the State until compliance is achieved. The information required to be collected by the States will be used to determine whether the States are in substantial compliance with these requirements.

This request for renewed approval includes additional burdens for recordkeeping requirements under 49 CFR 384.231(d) concerning retention and updating of driver records on the Commercial Driver's License Information System (CDLIS). These requirements also include the maintenance of such driver records and driver identification data on the CDLIS as the FMCSA finds are necessary to implement and enforce the disqualifications called for in 49 U.S.C. 384.215 through 384.219, and 384.221 through 384.224.

Respondents: Motor carriers, CMV drivers and State governments.

Estimated Total Annual Burden: 1,080,345 hours. The information collection is comprised of four components:

(1) Notification of convictions: Estimated number of annual responses = 3,776,667 (11.3 million CDL drivers/3 = 3,776,667). It takes approximately 10 minutes to notify a motor carrier concerning convictions. Each driver averages approximately 1 conviction every 3 years. The notification requirement has an estimated annual burden of 627,778 burden hours (11.3 million CDL drivers/3 × 10/60 = 627,778 hours);

(2) Employment history: Estimated annual turnover rate = 14%. There are an estimated 1,582,000 annual responses to this requirement (11.3 million CDL drivers × .14 annual turnover rate = 1,582,000). It takes approximately 15 minutes to complete this requirement. The employment history requirement has an estimated annual burden of 395,500 hours (1,582,000 annual responses × 15 min./60 = 395,500 hours);

(3) State compliance and certification: There are 51 responses to this requirement (50 States and the District of Columbia) and it takes approximately 32 hours to complete each response. The compliance and certification requirement has an estimated annual burden of 1,632 hours (51 responses × 32 hours = 1,632 hours); and

(4) CDLIS Recordkeeping: Fifty (50) States and the District of Columbia are required to enter data into CDLIS about operators of CMVs and to perform record checks before issuing, renewing or upgrading a CDL or allowing a CDL transfer. We estimate that the average amount of time for each CDLIS inquiry is 2 minutes. The total burden hours is 55,435 for these combined activities: 12,160 hours for all States to create a new driver; 4,023 hours for all States to change the State of record; 19,759 hours for all States to change data and 19,493 hours to enter citizenship information.

Public Comments Invited: We invite you to comment on any aspect of this information collection, including, but not limited to: (1) Whether the collection of information is necessary for the proper performance of the functions of the FMCSA, including whether the information is practical and useful; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

Electronic Access and Filing: You may submit or retrieve comments online through the Docket Management System (DMS) at *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

You may also download an electronic copy of this document from the DOT Docket Management System on the Internet at *http://dms.dot.gov/search.htm.* Please include the docket number appearing in the heading of this document.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.73.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 03–30104 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA –2003–16405]

Notice of Request for Renewal of a Currently Approved Information Collection: Request for Revocation of Authority Granted

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FMCSA is seeking public comments about our intent to request the Office of Management and Budget's (OMB) approval to renew the currently approved information collection identified as ''Request for Revocation of Authority Granted.'' This information collection notifies the FMCSA of a voluntary request by a motor carrier, freight forwarder, or property broker to amend or revoke its registration of authority granted. The Paperwork Reduction Act requires the publication of this notice.

DATES: Please submit comments by February 2, 2004.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590; telefax comments to (202) 493–2251; or submit electronically at *http://dmses.dot.gov/submit.* Be sure to include the docket number appearing in this notice's heading. All comments received may be examined and copied

at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Mills Lee, (202) 385–2423, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh St., SW., Washington, DC, 20590. Office hours are from 7:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Request for Revocation of Authority Granted.

OMB Approval Number: 2126–0018.

Background: Title 49 of the United States Code (U.S.C.) authorizes the Secretary of Transportation (Secretary) to promulgate regulations governing the registration of for-hire motor carriers of regulated commodities (49 U.S.C. 13902), surface transportation freight forwarders (49 U.S.C. 13903), and property brokers (49 U.S.C. 13904). The FMCSA carries out this registration program under authority delegated by the Secretary. Under 49 U.S.C. 13905, each registration is effective from the date specified and remains in effect for such period as the Secretary determines appropriate by regulation. Section 13905(c) grants the Secretary the authority to amend or revoke a registration at the registrant's request. On complaint or on the Secretary's own initiative, the Secretary may also suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder for willful failure to comply with the regulations, an order of the Secretary, or a condition of its registration. Form OCE–46 is used by transportation entities to voluntarily apply for revocation of their registration authority in whole or in part. The form requests the registrant's docket number, name and address, and the reasons for the revocation request.

Respondents: Motor carriers, freight forwarders, and brokers.

Average Burden per Response: 15 minutes.

Estimated Total Annual Burden: 250 hours (1,000 motor carriers × 15 minutes/60 minutes).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) The necessity and usefulness of the information collection for the FMCSA to meet its goal in reducing truck crashes; (2) the accuracy of the estimated burdens; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Electronic Access and Filing: You may submit or retrieve comments online through the Docket Management System (DMS) at *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the DMS web site.

You may download an electronic copy of this document by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Authority: 49 U.S.C. 13902, 13903, 13904 and 13905; and 49 CFR 1.73.

Issued on: November 26, 2003.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 03–30105 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

American Short Line and Regional Railroad Association

[Waiver Petition Docket Number FRA–2003–16271]

American Short Line and Regional Railroad Association (ASLRRA), on behalf of their membership, seeks a waiver of compliance from the requirements of the *Locomotive Safety Standards,* 49 CFR part 229.23, which requires periodic inspection of all locomotives at intervals not to exceed ninety-two (92) days, and from the requirements 49 CFR 229.25, which identify items to be inspected during a periodic inspection. ALSRRA believes that the short line and regional railroads that it represents do not operate their locomotive in the same environment as the larger Class I railroads. They feel that Class I railroads operate twenty-four hours a day, seven days a week, with longer and heavier trains, over greater distances then short line and regional railroads. ALSRRA feels that the *Locomotive Safety Standards* periodic inspection and testing requirements should recognize this. If granted, the ALSRRA feels that its members should be allowed to perform the periodic, during required, annual inspections 49CFR 229.27.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2003–16271) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

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). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on November 26, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–30100 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Burlington Northern and Santa Fe Railroad Company

[Waiver Petition Docket Number FRA–2003–16440]

The Burlington Northern and Santa Fe Railroad Company (BNSF) seeks a waiver of compliance with the *Locomotive Safety Standards,* 49 CFR 229.23, 229.27 and 229.29, as they pertain to the requirement to maintain the locomotive repair record form FRA 6180.49A, commonly referred to as the Blue Card, in the cab of their locomotives. If granted, BNSF would maintain locomotive inspection information in a secure BNSF data base. The data base would be maintained as the required office copy of form FRA 6180.49A. A computer generated form, which contains all information currently contained on the required FRA 6180.49A, would be maintained on board the locomotive. In place of required signatures of persons performing inspections and tests, BNSF employees would be provided with a unique login identification number and a secure password to access the system and verify performance of inspections. In place of signatures, computer generated reports would block print the name of the employee performing a required inspection and block print the employee's supervisor who is certifying that all inspections have been made and all repairs were completed. Required filing of the previous inspection record will be maintained through the data base.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2003–16440) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

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). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on November 26, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–30101 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Long Island Rail Road

[Waiver Petition Docket Number FRA–2003–16265]

Long Island Rail Road (LIRR) seeks a waiver of compliance with the *Locomotive Safety Standards,* 49 CFR part 229. Section 81(b), for their fleet of ''M–7–EMU'' passenger locomotives and Dual-Mode Locomotives (DM30) that requires that locomotives equipped with third-rail shoes shall have a device for insulating current collecting apparatus from the third-rail. LIRR is requesting that FRA extend a previously granted waiver, LI–80–15, covering M1 & M3 Electric Multiple Unit passenger cars to include newly acquired M7 cars and DM–30 locomotives. The request indicates that the LIRR continues to utilize the Electric Operating Instructions (CT290) for rail isolation and de-energizing, which was the basis for the granting of the original waiver.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2003–16265) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular

business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into 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 Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on November 26, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–30099 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Union Pacific Railroad Company

[Docket Number FRA–2003–16442]

The Union Pacific Railroad Company (UP) seeks a waiver of compliance with the *Locomotive Safety Standards*, 49 CFR part 229.25(b), as it pertains to the requirement that ''all electrical devices and viable insulation shall be inspected'' at each periodic inspection. If the waiver is granted, UP, as an alternate method to removing sufficient number of covers from traction motors and generators to visually inspect such equipment, would monitor ground leakage current. UP feels that monitoring groung leakage is superior to visual inspection method.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2003–16442) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

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). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on November 26, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–30102 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2003–16441

Applicant: Norfolk Southern Corporation, Mr. Brian L. Sykes, Chief Engineer, C&S Engineering, 99 Spring Street, SW., Atlanta, Georgia 30303.

Norfolk Southern Corporation seeks approval of the proposed discontinuance and removal of the automatic permissive block (APB) signal system, on all main, siding, and auxiliary tracks, between Naples, milepost W–14.7 and Tuxedo, milepost W–26.0, in North Carolina, and between Landrum, milepost W–45.0 and Inman, milepost W–56.1, in South Carolina, on the Piedmont Division, Asheville to Charleston District. The proposed changes include conversion of the method of operation to track warrant control in the area where the APB system is removed, and retention of the APB system between mileposts W–0.0 and W–14.7 and mileposts W–56.1 and W–65.1, on each end of the line segment.

The reason given for the proposed changes is that the line between Asheville, and Spartanburg is no longer needed as a through route. The Asheville to Tuxedo portion on the west end will be used for local service and CPL coal trains, while the Landrum to Spartanburg portion on the east end will be used for local service only.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that 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.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on November 26, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–30103 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16462; Notice 1]

General Motors Corporation, Receipt of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) has determined that certain model year 2003 and 2004 Saturn Ion Sedan and Coupe vehicles it produced and sold are not in full compliance with 49 CFR 571.118, Federal Motor Vehicle Safety Standard (FMVSS) No. 118, ''Power-Operated Window, Partition, and Roof Panel Systems.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), GM has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

GM has determined that all 2003 and 2004 Model Year Saturn Ion Sedan and Coupe vehicles built before September 5, 2003, and with a Vehicle Identification Number (VIN) less than 1G8AG52F24Z121302 and equipped with either power windows or a power sunroof do not conform to the requirements of S4(e) of FMVSS No. 118.

S4 provides that ''power operated window, partition, or roof panel systems may be closed only in the following circumstances:''

(e) During the interval between the time the locking device which controls the activation of the vehicle's engine is turned off and the opening of either of a two-door vehicle's doors or, in the case of a vehicle with more than two doors, the opening of either of its front doors.

GM states that opening the passenger side door on these vehicles, following the ignition key being turned to ''OFF,'' does not cancel the Retained Accessory Power (RAP) function, allowing the power-operated windows and roof panel to continue to operate for up to ten minutes or until the driver's door is opened. Opening the driver's door on these vehicles does cancel this RAP function. FMVSS 118, S4(e) requires that the RAP function be cancelled when either of the front doors is opened once the ignition key has been turned off.

GM believes that the noncompliance is inconsequential to motor vehicle safety, and that no corrective action is warranted. GM supports this assertion on the basis that NHTSA has acted on three petitions involving vehicles in which power windows or roofs could be operated after the front door was opened:

- In 1995, NHTSA granted a Volkswagen petition involving passenger cars. It agreed that the purpose of the requirement was still highly likely to be met because (1) if the operator exited by the driver's door, the system was disabled and (2) it was unlikely that the driver would exit by the passenger door because that would require passing over the console between the front seats. 60 FR 48197 (Sept. 18, 1995).
- In 1997, NHTSA denied a Ford petition involving Mercury and Nissan minivans. NHTSA distinguished these vehicles from the Volkswagen passenger cars because (1) there was no console or other impediment to the driver exiting the passenger door, (2) the higher floor pan to ceiling height made it easier for the driver to exit the passenger door, and (3) the minivans were promoted for family use. 62 FR 51500 (Oct. 1, 1997).
- In 1999, NHTSA granted a Mitsubishi petition involving passenger cars. NHTSA agreed that the Mitsubishi situation was comparable to the Volkswagen situation and unlike the Ford minivan situation. 64 FR 1650 (Jan. 11, 1999).

GM states that the Saturn situation is like those presented in the Volkswagen and Mitsubishi petitions. The power windows and roof remain operable only when the front passenger door is opened, a time when the operator presumably remains behind the wheel. The Saturn Ion Sedans and Coupes are equipped with bucket seats, a floor-mounted transmission selector lever, a center console, and a center-mounted parking brake lever. These components and the low roofline make it very difficult for a driver to exit from the passenger door.

GM has received no customer complaints or claims concerning this issue. Furthermore, the owner's manual cautions against leaving unattended children in the vehicle:

Caution: Leaving children in a vehicle with the ignition key is dangerous for many reasons. A child or others could be badly injured or even killed. They could operate power windows or other controls or even make the vehicle move. Don't leave keys in a vehicle with children.

The owner's manual also has a caution about the risk of injury or death from heat exposure if a child is left unattended in a closed vehicle. GM states that, based primarily on that concern, there has been a substantial public awareness effort during the past few years by NHTSA, safety organizations, and vehicle manufacturers to discourage adults from leaving children in vehicles at any time.

For these reasons, GM believes it is very unlikely that unsupervised children will be injured from operation of the power-operated windows and roof panel in these vehicles after the passenger door has been opened.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods: Mail: Docket Management Facility; U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: Go to *http://*

www.regulations.gov. Follow the online instructions for submitting comments.

The application, supporting materials, and all comments received before the close of business on the closing date indicated below will be considered. All comments and supporting materials received after the closing date will also be filed and considered to the extent possible. When the application is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 2, 2004.

Authority: 49 U.S.C. 301118, 301120; delegations of authority at CFR 1.50 and 501.8.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–30108 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–16464; Notice 1]

The Goodyear Tire & Rubber Company, Receipt of Application for Decision of Inconsequential Noncompliance

The Goodyear Tire & Rubber Company (Goodyear) has determined that certain tires it manufactured from 1998 to 2003 do not comply with S6.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, ''New pneumatic tires for vehicles other than passenger cars.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Goodyear has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Goodyear produced 37,980 LT265/75R16 Wrangler RT/s LR–E tires during the period from February 1, 1998, to May 31, 2003, which do not comply with FMVSS No. 119, S6.5(f). These tires were marked with 3 plies in the sidewall while there were actually 2 plies in the sidewall.

S6.5(f) of FMVSS No. 119 requires that each tire shall be marked on each sidewall with ''the actual number of plies.'' Goodyear states that this error occurred when these tires replaced the previous tire that had 3 plies in the sidewall. The new tire was changed to 2 plies but the mold drawing and specification were not revised to reflect this change.

Goodyear believes that this noncompliance is inconsequential to motor vehicle safety because the tires meet or exceed all applicable FMVSS performance standards, and all markings related to tire service (load capacity, corresponding inflation pressure, load range, *etc.*) are correct. The mislabeling noted above creates no unsafe condition.

Interested persons are invited to submit written views, arguments, and data on the application described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods: Mail: Docket Management Facility; U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The application, supporting materials, and all comments received before the close of business on the closing date indicated below will be considered. All comments and supporting materials received after the closing date, will also be filed and considered to the extent possible. When the application is granted or denied, a notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 2, 2004.

Authority: 49 U.S.C. 301118, 301120; delegations of authority at CFR 1.50 and 501.8.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–30107 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16463; Notice 1]

Hankook Tire America Corp., Receipt of Application for Decision of Inconsequential Noncompliance

Hankook Tire America Corp. (Hankook Tire) has determined that certain tires it produced in 2003 do not comply with S4.3(e) of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, New pneumatic tires.

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Hankook Tire has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

A total of approximately 3,049 tires are involved. These are 215/50R 17 91H 04PR H405 tires, which Hankook Tire produced during DOT weeks 16 through 21 and DOT weeks 24 and 25 of the year 2003. They have the nylon ply number mismarked on one side of the tire, specifically on the DOT serial side. The incorrect marking on the DOT serial side is ''2 steel + 2 polyester + 2 nylon'' and the correct marking on the opposite side is ''2 steel + 2 polyester + 1 nylon.'' Paragraph S4.3 of FMVSS No. 109 requires ''each tire shall have permanently molded into or onto both sidewalls * * * (e) Actual number of plies in the sidewall, and the actual number of plies in the tread area if different.''

Hankook Tire believes that the noncompliance is inconsequential to motor vehicle safety, and that no corrective action is warranted. Hankook Tire states that first, the affected tires meet all requirements of 49 CFR 571.109 except for the markings pertaining to S4.3(e), and second, the markings on the side of the tire opposite the DOT serial side are correct.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility; U.S. Department of Transportation, Nassif Building, Room

PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The application, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 2, 2004.

Authority: 49 U.S.C. 301118, 301120: delegations of authority at CFR 1.50 and 501.8.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–30106 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 25, 2003.

The Department of the 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 January 2, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0029.

Form Number: IRS Forms 941, 941–PR and 941–SS; and Schedule B (941 and 941–PR).

Type of Review: Extension.

Title: Forms 841, 941–PR and 941–SS: Employer's Quarterly Federal Tax Return; American Samoa, the Commonwealth of the Northern Mariana Islands; U.S. Virgin Islands; Schedule B (Forms 941 and 941–PR): Employer's Record of Federal Tax Liability.

Description: Form 941 is used by employers to report payments made to employees subject to income and social security/Medicare faxes and the amounts of these taxes. Form 941–PR is used by employers in Puerto Rico to report social security and Medicare taxes only. Form 941–SS is used by employers in the U.S. possessions to report social security and Medicare taxes only. Schedule B is used by employers to record their employment tax liability.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeeping: 5,798,054.

Estimated Burden Hours Respondent/Recordkeeper:

Form 941

Recordkeeping—12 hr., 39 min.
Learning about the law or the form—40 min.
Preparing the form—1 hr., 49 min.
Copying, assembling, and sending the form to the IRS—16 min.

Form 941 TeleFile

Recordkeeping—5 hr., 30 min.
Learning about the law or the Tax Record—18 min.
Preparing the Tax Record—24 min.
TeleFile phone call—11 min.

Form 941–PR

Recordkeeping—7 hr., 53 min.
Learning about the law or the form—18 min.
Preparing the form—26 min.

Form 941–SS

Recordkeeping—8 hr., 7 min.
Learning about the law or the form—18 min.
Preparing the form—26 min.

Schedule B (Forms 941 and 941–PR)

Recordkeeping—2 hr., 37 min.
Learning about the law or the form—6 min.
Preparing the form—9 min.

Frequency of Response: Quarterly.

Estimated Total Reporting/Recordkeeping Burden: 343,652,930 hours.

OMB Number: 1545–1449.

Regulation Project Number: IA–57–94 Final.

Type of Review: Extension.

Title: Cash Reporting by Court Clerks.

Description: Section 6050I(g) imposes a reporting requirement on criminal court clerks that receive more than $10,000 in cash as bail. The IRS will use the information to identify individuals with large cash incomes. Clerks must also furnish the information to the United States Attorney for the jurisdiction in which the individual charged with the crime resides and to each person posting the bond whose name appears on Form 8300.

Respondents: Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 250.

Estimated Burden Hours Respondent: 30 minutes.

Frequency of Response: On occasion, annually.

Estimated Total Reporting Burden: 125 hours.

OMB Number: 1545–1271.

Regulation Project Number: REG–209035–86 Final and REG–208165–91 Final.

Type of Review: Extension.

Title: REG–209035–86 Final: Stock Transfer Rules; and REG–208165–91 Final: Certain Transfers of Stock or Securities by U.S. Persons to Foreign Corporations and Related Reporting Requirements.

Description: A U.S. person must generally file a gain recognition agreement with the IRS in order to defer gain on a section 367(a) transfer of stock to a foreign corporation, and must file a notice with the IRS if it realizes any income in a section 367(b) exchange. These requirements ensure compliance with the respective Code sections.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 580.

Estimated Burden Hours Respondent: 4 hours, 7 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 2,390 hours.

OMB Number: 1545–1691.

Regulation Project Number: REG–120882–97 Final.

Type of Review: Extension.

Title: Continuity of Interest.

Description: Taxpayers who entered into a binding agreement on or after January 28, 1998 (the effective date of § 1.368–1T), and before the effective date of the final regulations under § 1.368–1(e) may request a private letter ruling permitting them to apply § 1.368–1(e) to their transaction. A private letter ruling will not be issued unless the taxpayer establishes to the satisfaction of the IRD that there is not a significant risk of different parties to the transaction taking inconsistent positions, for U.S. tax purposes with respect to the applicability of § 1.368–1(e) to the transaction.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Burden Hours Respondent: 150 hours.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 1,500 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–30093 Filed 12–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 25, 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 January 2, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1160.

Regulation Project Number: CO–93–90 Final.

Type of Review: Extension.

Title: Corporations; Consolidated Returns—Special Rules Relating to Dispositions and Deconsolidations of Subsidiary Stock.

Description: These regulations prevent elimination of corporate-level tax because of the operation of the consolidated returns investment adjustment rules. Statements are required for dispositions of a subsidiary's stock for which losses are claimed, for basis reductions within 2 years of the stock's deconsolidation, and for elections by the common parent to retain the NOLs of a disposed subsidiary.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: Other (one-time).

Estimated Total Reporting Burden: 6,000 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

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. 03–30094 Filed 12–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2439

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains.

DATES: Written comments should be received on or before February 2, 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 the form and instructions 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: Notice to Shareholder of Undistributed Long-Term Capital Gains.

OMB Number: 1545–0145.

Form Number: Form 2439.

Abstract: Form 2439 is used by regulated investment companies (RICs) and real estate investment trusts (REITs) to report undistributed capital gains and the amount of tax paid on these gains designated under Internal Revenue Code section 852(b)(3)(D) or 857(b)(3)(D). The company, the trust, and the shareholder file copies of Form 2439 with the IRS. The IRS uses the information to verify that the shareholder has included the capital gains in income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 8,363.

Estimated Time Per Respondent: 5 hours, 14 minutes.

Estimated Total Annual Burden Hours: 43,739.

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 28, 2003.

Carol Savage,

Management and Program Analyst.

[FR Doc. 03–30127 Filed 12–2–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 232

Wednesday, December 3, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement for a Proposed Mill Creek Watershed Plan Including Potential Flood Damage Reduction Measures and Ecosystem Restoration, Davidson County, TN

Correction

In notice document 03–29418 beginning on page 66082 in the issue of Tuesday, November 25, 2003, make the following correction:

On page 66082, in the third column, in the **DATES** section, in the fourth line, ''January 1, 2004'' should read ''January 15, 2004.''

[FR Doc. C3–29418 Filed 12–2–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

Correction

In notice document 03–29492 appearing on page 66466 in the issue of Wednesday, November 26, 2003, make the following corrections:

1. In the second column, under **Degradation and Transcriptional Inhibition of HIF-2alpha Protein by 17-AAG**, in the fourth paragraph, in the fifth line, ''factor-2a'' should read ''factor-2α''.

2. In the same column, under the same heading, in the same paragraph, the sixth line should read ''(HIF–2α). HIF–2α is thought to play an''.

3. In the same column, under the same heading, in the same paragraph, in the 13th line, ''HIF–2a'' should read ''HIF–2α.''

4. In the same column, under the same heading, in the same paragraph, in the 16th line, ''HIF–2a'' should read ''HIF–2α.''

5. In the same column, under the same heading, in the same paragraph, in the 22nd line, ''HIF–2a'' should read ''HIF–2α.''

[FR Doc. C3–29492 Filed 12–2–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,

December 3, 2003

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171

Hazardous Materials: Revisions to Incident Reporting Requirements and the Hazardous Materials Incident Report Form; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. RSPA–99–5013 (HM–229)]

RIN 2137–AD21

Hazardous Materials: Revisions to Incident Reporting Requirements and the Hazardous Materials Incident Report Form

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: RSPA is revising the incident reporting requirements of the Hazardous Materials Regulations and the hazardous materials incident report form, DOT Form F 5800.1. The major changes adopted in this final rule include: Collecting more specific information on the incident reporting form; expanding reporting exceptions; expanding reporting requirements to persons other than carriers; reporting undeclared shipments of hazardous materials; and reporting non-release incidents involving cargo tanks. These revisions will assure an increase in the usefulness of data collected for risk analysis and management by government and industry and, where possible, provide relief from regulatory requirements.

DATES: *Effective Date:* This final rule is effective July 1, 2004.

Compliance Date: Only the revised DOT Form F 5800.1 (01–2004) specified in this final rule will be accepted for incidents occurring on, or after July 1, 2004. Filers must use the previous DOT Form F 5800.1 (Rev 6/89) form for all incidents up to, and including June 30, 2004.

FOR FURTHER INFORMATION CONTACT: T. Glenn Foster, (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration or Kevin Coburn, (202) 366–4555, Office of Hazardous Materials Planning & Analysis, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

List of Topics

I. Background

Quality data that supports causal, trend, and risk analysis is fundamental to an effective safety program. The importance of data to the hazardous materials transportation safety program was highlighted in both a Department-wide initiative (ONE DOT Flagship Initiative on Hazardous Materials Handling/Incidents; ''HazMat Flagship'') which began in 1999 and a Department-wide Hazardous Materials Program Evaluation (HMPE) completed in 2000. The HazMat Flagship Initiative identified a set of new and ongoing actions relating to hazardous materials transportation that have the greatest potential impact on safety and program operation and that benefit from a cooperative approach. The HMPE used a multi-modal team to conduct a Department-wide program evaluation to document and assess the effectiveness of the Department's hazardous materials transportation safety program. The team's final report can be found at: *http://hazmat.dot.gov/hmpe.htm.*

Both the HazMat Flagship initiative and the HMPE emphasized the need to obtain more accurate and complete data on incidents. The hazardous materials transportation safety program relies on DOT Form F 5800.1, Hazardous Materials Incident Report, to gather basic information on incidents that occur during transportation and that meet specified criteria in § 171.16 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). The Research and Special Programs Administration (RSPA, we) last revised this form in 1989. In 2001, we received approximately 17,500 incident reports. RSPA uses the data and information reported by carriers to:

- Evaluate the effectiveness of the existing regulations;
- Determine the need for regulatory changes to cover changing transportation safety problems; and
- Identify major problem areas that should receive priority attention.

In addition, both government and industry use this information to chart trends, identify problems and training inadequacies, evaluate packagings, and assess ways to reduce releases.

Although the current incident report form provides useful information and is generally recognized as being fundamentally sound, there is room for improvement. We believe the opportunity exists to obtain better, more detailed information on events, such as more descriptive information to help determine root causes of events; to offer better linkages so that data can be coupled; and to better structure the report form to facilitate complete and accurate responses.

Our experience using data generated by the current form has identified certain deficiencies. Rulemakings such as Docket HM–225A, ''Revision to Regulations Governing Transportation and Unloading of Liquefied Compressed Gases,'' and Docket HM–213B, ''Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids,'' have demonstrated the difficulties involved with using DOT Form F 5800.1 data to determine precise failure modes and causes. These rulemakings also underscore the unreliability of reported incident cost information and the need to update this and other data as better information becomes available after initial submission of the form.

A study performed by the Argonne National Laboratory and the University of Illinois (National Risk Assessment for Selected Hazardous Materials Transportation) for RSPA used incident data as a basic input into the study, and recommended changes in a number of areas of incident data collection. Also, risk practitioners in government and industry offered suggestions for improved reporting of incident data in a white paper produced under the auspices of the Transportation Research Board.

The National Transportation Safety Board (NTSB) has issued several recommendations related to data collection and processing identified during the course of their investigations:

(1) NTSB Recommendation H–92–6 suggests establishment of a program to collect information necessary to identify patterns of cargo tank equipment failures, including the reporting of all accidents involving a DOT specification cargo tank, with or without a release of hazardous materials.

(2) NTSB recommendation R–89–52 suggests implementing regulations to ensure that there is formal feedback

from carriers to shippers when an incident has occurred.

(3) NTSB recommendation H–99–58 asks RSPA to establish a specific time period for reporting incidents meeting criteria in § 171.15 (telephonic notification).

Undeclared hazardous materials shipments, particularly in the air mode, are a serious safety concern within the Department. This issue received significant attention in the HazMat Flagship, and was recognized by the HMPE as an important area where better understanding of the frequency and impact of such shipments is essential. Data obtained through reporting discoveries of such shipments, whether or not the material is released, can help in defining the extent of the problem and in developing programs to mitigate the risk involved. DOT Form F 5800.1 is an efficient way to collect this data. Such data, even though it represents only undeclared hazardous materials that are discovered rather than the full spectrum of undeclared hazardous material shipments, can play a significant role in monitoring trends and measuring the effects of efforts to reduce undeclared shipments.

We are cognizant of the burden often imposed by regulatory requirements. As we developed changes to the incident reporting requirements, we attempted to minimize any additional burden associated with the revised requirements. For instance, we are adding exceptions to reporting requirements for small releases of materials that pose the least hazard where sufficient data already exists to manage risk. Further, we have deleted certain data fields that ask for information that is obtainable from other sources, for example, land use at the incident site. In addition, we are allowing electronic submission of the form, such as through an internet-based form or through a bulk data transfer, in order to facilitate the process. An internet-based form will ask only the questions the reporter is required to complete, based on previous answers. Accepting the data through a bulk file transfer allows larger companies to configure reporting software for their particular operations, maintain the information electronically, and eliminate paper and postage.

As a result of a meeting between DOT and members of several trade associations concerning hazardous materials incident reporting, the Association of American Railroads (AAR) sponsored a workgroup with segments of the transportation community to discuss the DOT Form F 5800.1 and the reporting requirements of §§ 171.15 and 171.16. The workgroup meetings were held during the winter of 1997–98. Participants included representatives from all four transportation modes, RSPA, shippers, container manufacturers, and labor. The workgroup submitted recommendations to RSPA. We developed questions based on input from these meetings, the DOT modal agencies, other concerned individuals, and on our own initiative.

On March 23, 1999, we published an advance notice of proposed rulemaking (ANPRM; 64 *FR* 13943) that asked a series of questions regarding the need to change current reporting requirements or the incident report form. We received approximately 40 comments from industry associations, State and local governments, non-profit associations, and carriers. Based on these comments, we developed proposed regulatory language and published a notice of proposed rulemaking (NPRM; 66 FR 35155) on July 3, 2001. We identified ten general issues in the NPRM, which are reviewed in Section III of this document. RSPA received over 30 comments on the NPRM. RSPA's decisions on the proposals of the NPRM and review of these comments are discussed in Section III, below.

II. Current Requirements

Currently, § 171.15 requires carriers to immediately notify the National Response Center (NRC) after any incident that occurs during transportation in which, as a direct result of hazardous materials:

(1) A person is killed;

(2) A person receives injuries requiring his or her hospitalization;

(3) Estimated carrier or other property damage exceeds $50,000;

(4) An evacuation of the general public occurs lasting one or more hours;

(5) One or more major transportation arteries or facilities are closed or shut down for one hour or more;

(6) The operational flight pattern or routine of an aircraft is altered;

(7) Fire, breakage, spillage, or suspected contamination occurs involving shipments of radioactive material or infectious substances (etiologic agents);

(8) There has been a release of a marine pollutant in a quantity exceeding 450 L (119 gallons) for liquids or 400 kg (882 pounds) for solids; or

(9) A situation exists of such a nature (*e.g.*, a continuing danger to life exists at the scene of the incident) that, in the judgment of the carrier, it should be reported to the National Response Center even though it does not meet any other immediate notification criteria. Carriers may report any of these incidents involving aircraft to the Federal Aviation Administration (FAA) Security Field Office. In addition, certain incidents involving infectious substances must be reported to the Centers for Disease Control and Prevention (CDC).

Each carrier required to make a report under § 171.15 is also required to complete DOT Form F 5800.1 in accordance with § 171.16. Additionally, unless excepted, a carrier is required to submit DOT Form F 5800.1 for any incident occurring during transportation that results in an unintentional release of a hazardous material from its package or the discharge of any quantity of hazardous waste.

We use the data and information reported by carriers to:

(1) Evaluate the effectiveness of the existing regulations;

(2) Determine the need for regulatory changes to cover changing transportation safety problems; and

(3) Identify major problem areas that should receive priority attention. In addition, both government and industry use this information to chart trends, identify problems and training inadequacies, evaluate packagings, and assess ways to reduce releases.

In considering how to improve the incident report form, our primary objective was to ensure that useful information is collected in an efficient manner. We believe it is possible to improve the structure and format of the form to make it easier to understand and complete. To reduce the reporting burden on persons responsible for completing the incident report, we believe certain existing fields that ask for information that is obtainable from other sources can be deleted. We also believe it is appropriate to add information in certain areas where it can help determine future program direction and support measures of program effectiveness. For example, a good description of packaging performance, documenting both failures and successes, helps us define future requirements. In addition, undeclared hazardous materials is an area of significant safety concern to DOT, and the ability to identify the frequency and source of such shipments is an important factor in reducing their occurrence. A complete description of changes to the content of the form is provided in the following sections.

III. Summary of Issues, Comments and Changes

In the NPRM, RSPA proposed changes on the following ten issues. In this final rule, we discuss comments submitted to the docket, concerns raised by

commenters, and our decisions on each issue below:

(A) Electronic filing
(B) Revisions to the form
(C) One-call reporting
(D) Expansion of reporting requirements to persons other than carriers
(E) Exceptions to incident reporting
(F) Criteria for telephonic notification
(G) Updates to reports
(H) Reporting when no hazardous material is released during an incident
(I) Undeclared shipments of hazardous materials that do not result in a release
(J) Notifying shippers of incidents.

A. Electronic Filing

In the NPRM, we proposed to adopt a variety of electronic filing methods, including facsimile (fax), electronic mail (e-mail), and internet-based forms. Electronic filing of incident reports is consistent with the requirements of the Government Paperwork Elimination Act (GPEA), which generally mandates that, by October 2003, agencies accept electronic documents and electronic signatures for the transactions that they conduct with the public and regulated parties.

All commenters support an electronic filing option. Commenters state that fax, e-mail, and internet submissions should be available to facilitate reporting. However, some commenters also state that electronic filing should be optional rather than mandatory.

We agree that electronic filing of incident reports would reduce the reporting burden on industry and increase reporting flexibility. However, because of logistical obstacles, all means of electronic filing will not be immediately available. We are in the process of developing the capability to allow electronic submission of the form and bulk transfer, and will issue an advisory notification upon completion. Although initial systems available to receive electronic submissions are limited, they will be expanded in the future as new systems are implemented within the Department or as new technologies become available.

We will continue to accept filing of a paper form, but we will not require the reporter to submit duplicate copies of the form. In addition, we have revised language in the regulations concerning the retention of the report in order to facilitate electronic storage. We have removed the provision requiring approval from the Department of Transportation to retain copies at a location other than the reporter's principal place of business. Instead, we allow the reporter to store the report at a location other than the principal place of business if the report is available to the reporter's principal place of business 24 hours after a request by a representative of the Department. Often, electronic documents may be stored on a computer server that is not physically located at the person's place of business. Additionally, the storage location is not of paramount concern, provided the document can be produced in the specified time. This change allows more flexibility for storing electronic and physical copies of the reports.

B. Revisions to the Form

The proposed modifications to the data form were published in the **Federal Register** in a notice of proposed rulemaking (NPRM). These proposed modifications introduced new and revised data elements in the form. These revisions are intended to minimize burdens on the end user, while necessitating that the form be completed accurately.

As a result of these new requirements, as well as RSPA's intent to maximize the accuracy and completeness of the forms we receive, RSPA procured the services of the QED Group, LLC (QED) of Washington, DC to recruit both experienced and non-experienced users of the previous form to test the form proposed in the NPRM. QED convened a series of focus groups to provide RSPA with constructive feedback on the revised form.

The first focus group meeting took place on October 25, 2002, with a morning session attended by ten experienced filers and an afternoon session attended by four less experienced filers. Neither group indicated that major revisions to the layout of the draft form were necessary. However, we derived the following observations from this meeting:

- The form layout should be more compact than the version in the NPRM, but attention should still be paid to font size.
- The form should avoid the use of shaded regions, as these interfere with faxing.
- The form should explicitly identify the form and/or series number of the accompanying instructions, as well as URL information for instructions available online.
- Any such online instructions should contain links to the sections of the CFR cited, and should also contain links to definitions.
- There were no major issues or concerns with the graphics or other visual cues.
- Infrequent filers were concerned that the conditions for form filing were not presented all in one place. They suggested a different grouping of instructions, something along the lines of a ''Who—Why—When?'' section. Infrequent filers preferred a format similar to a flowchart (perhaps on a separate instruction page or worksheet) to walk them through the incident characteristics and help them arrive at a filing decision.

Considerations of an electronic form were not a major element of the discussions in this session. The most significant finding regarding the design of the electronic form was that large companies would prefer direct data exchange to a piecemeal filing of form information via the Web. Small companies, however, welcomed the Web interface primarily because of the potential for live HTML links to instructions, definitions and supporting regulations.

The second focus group meeting took place on November 22, 2002, with a morning session attended by seven experienced filers and an afternoon session attended by six less experienced filers.[1] The full QED report can be found in the Docket. Some of the comments received from this group included:

- In general, participants reacted very positively to the new electronic form. Participants appreciated having direct access to the instructions for completing the form in an electronic version.
- Replace the numeric values and alpha codes with check-boxes.
- Change the wording for the entry of failure codes for packaging from ''Enter up to 3 Codes'' to ''Enter up to 3 sets of Codes.'' They also suggested that a vertical line be drawn between each grouping of ''What Failed How Failed Cause(s) of Failure.''
- Air carriers indicated that for a hazardous material incident involving passenger baggage, there should be an ability to indicate the type of bag containing the item involved in the release, as well as any packaging within the bag.
- Language should be changed in Part 6 from ''Describe the package failure'' to something else since the report may not be in response to the failure of a package but due to some other hazardous material incident.
- Participants indicated that they would like the ability to save templates. These templates could be linked to a company- or location-specific password, and would store information such as reporting entity address, mode, and

[1] Other scheduled attendees of both sessions experienced work-related emergencies or had other difficulties that prevented them from participating in the focus group.

possibly even material information (for single-material handlers). Alternatively, some participants indicated that they would like to be able to host versions of these forms (with company-specific information already filled in) on their own intranets and post the reports to DOT databases from their own systems.

- Participants would like to enter the UN number of the hazardous material, and have a scripted lookup function enter everything else into the various fields from a table.
- Provide additional ''skip patterns'' and validation logic—for example, if the release is caused by a ''puncture,'' the program should make ''shell thickness'' a required data field and not allow the form to be saved or submitted if it is incomplete. Participants also mentioned that they would like relevant previous responses to gray out everything not applicable after item 23, and that item 23 itself should be linked to the response to 1(b). Similarly on item 27, if there are no fatalities, the numbers could be greyed out and ''tab'' could skip to the next valid item.
- Add ability to upload supplementary documentation/pictures, etc. on the part 6 page using an interface not unlike that for adding attachments to Web-based mail.
- Part 7 might be better as a dropdown box, since filers will probably supply a response that can be autocoded this way. This might save DOT time in having to back-code responses that fall into regular patterns such as ''enhanced training, accelerated repair schedule,'' *etc.*
- Participants stated that default values would be a good idea for the form. Having a default value for ''unknown'' might make it easier for DOT to identify missings/unknowns/not applicables, a frequent source of problems in data analysis from survey research.
- Measurement units entered throughout the form should be confined to a standard list and should exist in fields separate from the quantities field.

RSPA received numerous comments and questions on the proposed form layout. Several commenters mentioned the increase in the number of pages of the form. As we explained in the NPRM, the page numbers increased due to the addition of approximately 15 data fields to the basic incident information and the addition of more white space. The number of pages in the final version of the form actually only increased from 2 to 4 pages.

In considering how to organize and lay out the incident report form, our primary objective is to ensure that useful information is captured in an efficient manner. We are deleting certain existing fields that ask for information obtainable from other sources or that can be extrapolated from other fields. The questions ''Is material a hazardous substance?,'' ''Was the RQ met?,'' and the ''Land Use and Community Type'' fall into this category. Similarly, the ''Highway Type'' and ''Number of Lanes at a Vehicle Accident/Derailment site'' can be determined from other sources. In addition, the type of labeling or placarding fields offer limited benefit to safety improvements, and have not been included in the revised form.

Additional information in certain areas is needed to help determine future program direction and to support measures of program effectiveness. Separate fields for information on packing group, hazardous wastes, and toxic by inhalation materials would allow us to better identify the materials involved in incidents. Further, we believe the inclusion of cross-reference fields, such as the NRC report number and the shipper's and carrier's hazardous materials registration number, will help broaden the ties the incident data has with other Federal hazardous materials data.

We also believe gathering additional information on the types of persons who respond to incidents, the types of persons who are killed, injured or need to be evacuated, as well as how long evacuations or closures last, will contribute to incident risk analysis. The more detailed questions concerning air transport incidents and questions directed to specific types of packagings will allow for more focused review of where and how packages fail. Additionally, the ability to identify the frequency and source of undeclared hazardous materials shipments, an area of significant safety concern to DOT, is important to reduce their occurrence.

We are revising the packaging sections of the incident report form to eliminate duplicative and confusing formatting and to enable us to gather more specific packaging information. For example, we are replacing check boxes to identify damage to packagings with failure codes specific to each packaging type. The utilization of failure codes was one of the recommendations that came from the AAR workgroup discussed in Section I. The use of failure codes allows the preparer to select from a set of choices appropriate to the particular packaging type involved. Also, we believe use of terminology appropriate for the particular packaging type will help avoid confusion and ultimately make it easier for the preparer to complete the incident report. Although we have not adopted failure codes of the exact type and form recommended by AAR, we have revised the format of the codes on the form so that the first code element for ''What Failed'' corresponds to the specific point of failure followed by location codes. This allows for easy translation of the codes. The single AAR code corresponds to a specific sequence of codes to be entered on this form. Further, we recognize that the experience we gain with the early use of these failure codes may result in periodic changes as the set matures. The instructions invite suggestions for improvements to the failure codes.

The expansion will add about 15 data fields to the basic incident information. We believe the benefits to be gained by collecting more detailed information will require only minimal additional time to report these mostly short yes/no or fill-in-the-blank fields. In addition, we have provided space for recommendations or actions. The purpose of this section is not to assess blame or serve as a definitive statement relating to the root causes of an incident, but rather to gather ideas on preventing the recurrence of incidents. Such information can help identify common problems and may be used to support regulatory changes. Further, we have reformatted the incident report form to facilitate completion (*e.g.*, more white space and a more logical flow from item to item). While this reformatting has added two additional pages to the form, we believe that this design will improve accuracy and make the form easier to complete.

C. One-Call Reporting

In this final rule, we are adopting the proposal to eliminate the separate telephonic notification requirement to FAA for air shipments and to require all air carriers to report incidents subject to § 171.15(a) to the National Response Center (NRC). NRC would then make any subsequent notifications. NRC personnel are specifically trained on which notification requirements pertain to which entities, thus, this change should result in more accurate notification to parties with a need to know.

Only a few commenters addressed the one-call issue. In its comment, the California Highway Patrol (CHP) supported streamlining the calling process, but emphasized the need to alert state officials via 911. RSPA recognizes the difference between contacting emergency response officials and incident reporting to DOT. As the CHP states, ''* * * it is the local emergency response agency(s) who

handle the entire incident and nearly every instance bears the initial response burden and often the greatest opportunity to mitigate the adverse consequences.'' We reiterate that the one-call for reporting to the NRC is for incident reporting. In the case of any incident involving hazardous materials that requires immediate emergency response, the local authorities should be immediately notified. In addition, adoption of this requirement does not relieve a person from reporting discrepancies of hazardous material shipments transported by air. Discrepancies are those air shipments involving hazardous materials which are improperly described, certified, labeled, marked, or packaged, in a manner not ascertainable when accepted. Section 175.31 of the HMR requires, as soon as practical, a person to report by telephone to the nearest FAA Security Field Office a discrepancy relative to the shipment of a hazardous material following the shipment's acceptance for transportation aboard an aircraft.

The United Parcel Service (UPS) indicated its support for continuing reporting to the FAA Security Field Office in place of reporting to the NRC. UPS stated that ''* * * direct notification to the FAA by the person in physical possession of the hazardous material will result in more accurate notification * * *'' than notification to the NRC. UPS notes that ''* * * nothing in the administrative record provides a reasoned discussion of why elimination of direct FAA notification would result in more accurate incident reporting.'' A Presidential review of Federal release prevention, mitigation, and response authorities, conducted under the requirements of section 112(r)(10) of the Clean Air Act, as amended in 1990, found that the current reporting system was complex and confusing. In 1993, the National Response Team (NRT), comprised of multiple federal agencies, submitted a Report to Congress entitled ''A Review of Federal Authorities for Hazardous Materials Accident Safety.'' In this report the NRT recommended that streamlining the accident notification reporting requirements be further examined. The NRT found that the duplicative reporting requirements imposed by the various agencies was a burden.

The one-call reporting system is an attempt to streamline the process for federally mandated reporting of accidental discharges of hazardous materials. There are a variety of incident scenarios, that, under current Federal regulations, would require the reporting party to call multiple Federal agencies to notify them of an accidental release. Under the one-call system, the NRC receives all Federal telephonic notifications of hazardous materials incidents and then notifies all appropriate parties, ensuring that incident data is collected and maintained. Centralizing the collection of release notifications will result in improved data quality by ensuring that all release notification data is collected in a consistent and comprehensive manner.

D. Expansion of Reporting Requirements to Persons Other Than Carriers

Currently, the requirements for telephonic and written reporting of transportation incidents apply to carriers only. Operators of transportation facilities, such as marine terminals, who may not perform carrier functions are not required to report transportation incidents involving hazardous materials. Most commenters to the NPRM agree that the person in physical control of a hazardous material when an incident occurs during transportation should be responsible for reporting that incident. The Norfolk Southern Railway Company supports the proposal and notes ''the person in control * * * would be the person most knowledgeable about the incident.''

Many commenters note that a pending RSPA rulemaking that will define when a material is ''in transportation in commerce'' (Docket HM–223, NPRM published on January 27, 2001; 66 FR 59220) is an important factor in determining when and what entities would be required to report incidents. DuPont comments ''* * * this issue cannot be resolved until the DOT publishes a final rulemaking on Docket HM–223 Applicability of the Hazardous Materials Regulations to Loading/Unloading and Storage.'' A commenter associated with the F 5800.1 Task Force supports ''* * * the idea that the party having physical control of the material is the one who should be required to complete the report * * *'' but notes the relationship of Docket HM–223. ''If the final rule in HM–223 is promulgated as proposed, it would relieve parties, other than carriers from having to execute incident reports'' notes the commenter. He continues ''This would mean that consignors and consignees would not have to report incidents occurring during loading or unloading.'' The International Vessel Operators Hazardous Materials Association, Inc. (VOHMA) expands the concept further by questioning ''* * * who will actually be required to report an incident that occurs during the course of activities that might not be considered to be 'in transportation' and in fact, [we] wonder if the responsibility might then fall back on the last carrier.''

On October 30, 2003, we published a final rule under Docket HM–223 (68 FR 61906). Among other issues, the final rule clarifies the applicability of the HMR to specific functions and activities, including loading, unloading, and storage operations. Consistent with the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), the final rule defines ''transportation'' to mean the movement of property and loading, unloading, or storage incidental to the movement. Transportation in commerce begins when a carrier takes physical possession of a hazardous material for the purpose of transporting it and continues until delivery of the package to its consignee or destination as evidenced by the shipping documentation under which the hazardous material is moving. The final rule defines ''loading incidental to movement'' to mean the loading by carrier personnel or in the presence of carrier personnel of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel; for a bulk packaging, ''loading incidental to movement'' means the filling of the packaging with a hazardous material by carrier personnel or in the presence of carrier personnel. The final rule defines ''unloading incidental to movement'' to mean the removal of a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel or the emptying of a hazardous material from a bulk packaging after the hazardous material has been delivered to the consignee and prior to the delivering carrier's departure from the consignee facility or premises. Under the final rule, ''storage incidental to movement'' means storage by any person of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document.

This final rule requires reporting of incidents under §§ 171.15 of 171.16 that occur during the time that the material is in transportation. Consistent with the definitions adopted in HM–223, incidents that occur during loading operations conducted by carrier personnel or in the presence of carrier personnel must be reported, as must incidents that occur during unloading operations conducted prior to a carrier's departure from the consignee's premises. Hazardous materials incidents

that occur during loading operations conducted by a shipper prior to a carrier's arrival at its facility to pick up the hazardous material or during unloading operations conducted by consignee personnel after the hazardous material has been delivered and the carrier has departed the premises are not required to be reported under §§ 171.15 and 171.16. Note in this regard that the HM–223 final rule changes the applicability of the HMR to rail tank car unloading operations conducted by consignee personnel, which are currently subject to the provisions of § 174.67. Under HM–223, such rail tank car unloading operations are not transportation functions and, thus, are not subject to incident reporting requirements.

Other commenters opposed the requirement in total. In addition to Docket HM–223 concerns, the Fertilizer Institute (TFI) and The National Propane Gas Association (NPGA) ''* * * contend that this change will increase the burden on industry.'' Additionally, they claim the ''* * * change will decrease the efficiency of RSPA's data collection'' because it is possible that more than one person will report the same incident. The Petroleum Marketers Association of America (PMMA) sees an increase in burden for industry and RSPA by ''* * * requiring procedural changes, additional training, and time'' for industry and the confusion caused by duplicative reporting will ''* * * decrease the efficiency of RSPA's data collection efforts and will not benefit its risk assessment.''

RSPA already receives duplicate reports and currently has a system for identifying duplicative reporting, thus the impact to RSPA should be minimal. In our Regulatory Evaluation, available in the HM–229 Docket (RSPA–99–5013–87), we discuss the additional cost to industry by adopting this proposal. We anticipate a minimal increase in the number of reports concerning incidents that occur during loading and unloading because these activities are already reported by carriers. Given the volume of handlings, however, we conservatively estimate a 2% increase in the number of reports concerning incidents that occur during loading and unloading.

RSPA also expects an increase in the number of reported incidents occurring in facilities where hazardous materials are stored incidental to transportation. An RSPA study conducted in 1998 estimates that many of the 800,000 daily shipments of hazardous materials involve consolidations, intermodal or intramodal transfers and in-transit storage, resulting in 1.2 million daily hazardous materials movements. We estimate that extending reporting requirements to in-transit storage facilities will increase the overall total number of reports by 10%.

The intent of this rule change is to collect spill information on incidents that occur while the hazardous material is in transportation. Since RSPA has jurisdiction over hazardous materials in transportation, excluding reporting on incidents that occur during in-transit storage creates an incomplete data set of hazardous materials incidents. In the past, RSPA has discovered such incidents only from sources such as press reports of the most serious incidents. The information will provide a more complete picture of incidents occurring throughout the transportation system.

In this final rule, we are requiring each person in physical control of a hazardous material while it is in transportation in commerce to report any incident that occurs while the material is in that person's possession. For example, an in-transit storage facility owner would have to report any event that meets the provisions of §§ 171.15 or 171.16 and that occurs during the time that a hazardous material is stored in transportation. Consistent with the definitions adopted in the HM–223 final rule, storage incidental to movement is storage by any person of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document. Reports of incidents or releases that occur during incidental storage will provide more accurate and complete information regarding hazardous materials incidents.

In addition, we are revising § 171.21 to require the person responsible for reporting the incident, rather than the ''carrier,'' to make available all records and information pertaining to the incident.

E. Exceptions to Incident Reporting

As proposed in the NPRM, an incident meeting all of the following criteria would not be required to be reported:

(1) The shipment has not been offered for transportation or transported by air;

(2) None of the criteria in § 171.15(a) apply;

(3) The material is not a hazardous waste;

(4) The material is properly classed as—

(i) ORM–D; or

(ii) A Packing Group III material in Class or Division 3, 4, 5, 6.1, 8, or 9;

(5) Each package has a capacity of less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids;

(6) The total aggregate release is less than 20 liters (5.2 gallons) for liquids or less than 30 kgs (66 pounds) for solids; and

(7) The material does not meet the definition of an undeclared hazardous material in § 171.8.

In the NPRM, we proposed to except small spills of low hazard materials from the reporting requirements. We wanted to require that an aggregate spill of 20 liters (5.2 gallons) or over for liquids or 30 kg (66 pounds) or over for solids of otherwise excepted hazardous materials be reported. For example, if twelve 5-gallon containers of a flammable liquid hazardous material in PG III are spilled, no incident report would be required unless the aggregate amount released from the twelve containers of the hazardous material is at least 5.2 gallons or one of the conditions in § 171.15(a) is met. Based on reports received over the past five years, we expect that the proposed exceptions would result in a sizeable net reduction of the total number of incident reports filed each year.

Most commenters agreed with the proposed new exceptions and suggested that we include additional reporting exceptions. The Reusable Industrial Packaging Association (RIPA) suggested that non-bulk packagings and IBCs containing residues should not be reported if a spill of the residue occurs. Safety-Kleen requested that hazardous wastes be included in the reporting exceptions. RSPA does not agree with either commenter. Since this information is used to determine the effectiveness of packagings, excluding packagings larger than what was proposed, even if they only contain a residue of a hazardous material, leaves out incidents we wish to include in our data set. In addition, hazardous wastes are generally not included in most exceptions, even if the regulations for materials only meeting the definition of a hazardous waste and no other hazard class are relatively minimal.

Some commenters were against expanding the reporting exceptions or noted that we risk limiting the data we collect concerning spills. Chevron/Phillips warns ''* * * the inclusion of many of the exceptions noted in HM229 [sic] may further reduce data that can be used to further risk management efforts.'' The International Brotherhood

of Teamsters ''* * * fears that RSPA will be relinquishing its authority to collect information about hazardous materials releases that can, and often do, lead to workers being exposed to hazardous materials.''

These expanded exceptions, as noted by several commenters, actually reduce some of the exceptions for paint and paint-related materials, and for limited quantities in Packing Group II. The Glidden Company calculates ''* * * the significant increase in reporting will require * * * an additional 175 to 180 reports per year.'' BASF states ''* * * this proposed change will significantly increase the burden on the paint manufacturing industry * * *'' and DuPont adds that the change ''* * * would escalate the cost with no corresponding increase in safety.'' Indeed, the exceptions presented in this final rule eliminate exceptions based on specific shipping names for paint and batteries. Instead, the exceptions in this final rule are based on the hazards the materials pose and quantities of those materials.

The original exceptions to spill reporting were implemented under Docket HM–36A (45 FR 73682) in 1980, before Packing Groups for materials were developed in Docket HM–181 (55 FR 57402 and 56 FR 66124). When Packing Groups were incorporated into the regulations, we did not revise § 171.16 to update the reporting exceptions in light of the Packing Group changes. In 1996, under a broad regulatory review, exceptions for limited quantities of Packing Group II and III materials were added under Docket HM–222B (61 FR 27166), but we did not conduct a thorough review of incident reporting, and the basis for reporting exceptions.

In reviewing the reporting requirements and the exceptions to reporting, we have determined that the data needs for releases of small amounts of low-hazard materials is low. We now have ample data from incidents over the past 20 years involving small releases of Packing Group III hazardous materials in small quantities to warrant a reporting exception. However, we have determined that incidents involving Packing Group II materials warrant reporting, even in these smaller quantities. These materials pose a greater hazard than Packing Group III materials, so packaging failures and other incidents will continue to be required to be reported in order to monitor and improve regulations. Thus, we have adopted the proposed exceptions published in the NPRM.

In addition, we are clarifying that the incident report requirements do not apply to minimal amounts of hazardous materials escaping: (1) Due to disconnecting a loading or unloading line or from the operation of venting devices (for which venting is authorized); or (2) from the manual operation of seals in equipment such as pumps, compressors, and valves during the normal course of transportation if the release does not trigger any of the provisions for a telephonic notification described in § 171.15 of this subpart and does not result in property damage.

F. Criteria for Telephonic Notification

Under current § 171.15 requirements, one of the criteria that triggers the requirement for immediate notification is property damage that exceeds $50,000. RSPA proposed removing this requirement. There were not many comments on this point. The CHP supported the proposal because ''quite often the true total costs associated with an incident will not be determined for a substantial period of time following an incident.'' We agree and are removing the monetary criterion.

We proposed to clarify the requirements for ''immediate notification'' by specifying that telephonic notification must be made as soon as practicable following the occurrence of an incident and in all instances within 12 hours after an event requiring notification. This revision also responds to NTSB recommendation H–99–58 to provide a specific time period to report an incident by telephone. NTSB recommended that a 2-hour time frame was preferable. Commenters note the difficulties in complying with a 2-hour response time. The Conference on Safe Transportation of Hazardous Articles, Inc. notes that ''* * * immediate reporting requirements should focus on obtaining response services that are required to gain control of an incident.''

RSPA understands contacting emergency response entities may be of primary concern immediately following an incident; however, notification of federal authorities through the NRC is also essential. The NTSB comments that railroads, under 49 CFR 840.3, are required to provide telephonic notification to NRC within 2 hours in the event of an accident resulting in a fatality, release of hazardous materials, or evacuation of the public, and within 4 hours after an accident resulting in damages exceeding certain limits. RSPA understands the circumstances involving remote highway incidents may be more difficult to address in the constrained time frame. We do not want to detract from the immediate emergency response efforts focused on amelioration of a spill, therefore we have clarified the requirements of ''immediate'' telephonic notification to be as soon as practical but no later than 12 hours after the occurrence of any incident.

G. Updates to Reports

In the NPRM, we proposed to require updates to the incident report form within one year under the following conditions:

(1) A death results from injury caused by a hazardous material;

(2) There was a misidentification of the hazardous material or package information on the incident report;

(3) Damage, loss or related cost that was not known when the initial report was filed becomes known; or

(4) Damage, loss, or related cost changes by $25,000 or more.

RSPA received several comments on updating reports. UPS commented that the requirement would be a ''* * * substantial burden for any carrier such as UPS * * *'' because it would have to monitor thousands of incidents per year to determine if any developments trigger an update. In addition, it noted that the requirement would ''* * * require a submitter to constantly update an incident report for one-year [sic] following its submission.'' Farmland Industries, Inc. mentions that if RSPA removes ''* * * cost as a requirement for telephonic reporting, consideration should be given to removing updated costs from an incident.''

DuPont does not support the proposal to update the report, even though the actual number of updates would be small. It does not believe ''* * * that a majority of the hazardous materials incidents reported would require updating because the quantities released are minimal.'' DuPont thinks the number of reports that would require updating are so minimal and ''* * * question if the small percentage that would qualify warrant a regulatory requirement for updating the reports.''

Other entities supported an updating requirement, with caveats. The Norfolk Southern Railway Company does not oppose the proposal, but feels the requirement to update based on a change of $25,000 in the costs of the incident would ''* * * serve no real purpose'' and would be burdensome to industry. Ashland, Inc. suggests that the costs requirement for updating the report be a $250,000 change and only if the cost changes by more than 10%. The F5800.1 Task Force also suggested including a 10% threshold.

We believe that substantive changes to the outcome of an incident should be

updated to ensure the accuracy and quality of the data we collect. Updated information provides a more meaningful approach to causal, trend, or risk assessment analysis. We are adopting the proposal to require updated incident reports for up to one year after the date of an incident for the following: (1) Death resulting from injuries caused by a hazardous material; (2) corrections to the identification of the hazardous material or package information; and (3) certain updated damage costs as additional information becomes available. Cost information would be updated when: (1) costs not known at the time the report was filed became known; or (2) original damage/cost estimates were revised by more than $25,000 or 10% of the original estimate, whichever is greater. In some cases, certain costs (such as decontamination and cleanup) may not be known within 30 days of the incident's occurrence, and would not be included in the initial incident report. In other cases, some costs (such as property damage) may be significantly higher than the original estimate. We estimate that about 800 incidents reported each year would require an update.

CHP mentions that updating the report should be streamlined for more accurate reporting. It is possible that in the future, with the advent of electronic data management systems, performing an update to the form may not require the re-submission of the DOT Form F 5800.1 form. Until that time, we will retain the current requirements for submitting updates.

Under § 171.21, persons required to report an incident are required to cooperate with any further investigation of that incident. In particular, incidents that we categorize as significant may require further investigation, or reports that are incomplete may require a follow-up.

H. Reporting When No Hazardous Material Is Released During an Incident

In the NPRM, we proposed to require certain incidents involving bulk packagings that do not result in release of a hazardous material to be reported. We stated that such information could provide a broader base for risk management in more critical transportation situations and that additional information could be used to gauge the performance and integrity of certain packagings. This proposal was in response to NTSB recommendation H–92–6, which requested that DOT implement a program to collect information necessary to identify patterns of cargo tank equipment failure, including the reporting of all accidents involving a DOT specification cargo tank. This request stems from the February 4, 1992 special investigation report on cargo tank rollover protection (PB92–917002). NTSB examined seven highway accidents in which cargo tanks overturned and hazardous materials were released through damaged closures or fittings on top of the tanks; none of the cargo tank shells had been breached. Among its conclusions were the following:

* There is inadequate information about the forces that can be encountered in a rollover accident and the extent to which rollover protection devices for cargo tanks can reasonably be designed to withstand these forces because neither the RSPA, the FHWA [Federal Highway Administration, now Federal Motor Carrier Safety Administration, or FMCSA], nor the industry has provided engineering modeling or other analysis to determine the magnitude of forces acting upon a cargo tank under different accident conditions, and

* The FHWA [now FMCSA] and the RSPA accident data bases are not adequate to identify important trends of potential problems related to the design and construction of bulk liquid cargo tanks.

Subsequently, in its report, NTSB recommends that RSPA ''implement, in cooperation with the FMCSA, a program to collect information necessary to identify patterns of cargo tank equipment failures, including the reporting of all accidents involving a Department of Transportation specification cargo tank.'' In an effort to minimize duplicative reporting of much of the same information, discussions with FMCSA and RSPA resulted in agreement that the F 5800.1 form would be suitable and appropriate to collect this type of information.

Most commenters oppose data collection for an incident that does not result in a release of hazardous materials. Commenters cite a number of reasons, the main ones being an increase in burden, an ambiguity in when a report was required, and the limited usefulness of the data collected under this proposal. The commenters made it clear that specific guidelines would be required to avoid what the National Tank Truck Carriers (NTTC) describe is a possible ''compliance trap'' due to varying definitions of ''damage'' from company to company and inspector to inspector. This point was raised numerous times. Utility Solid Waste Activities Group comments ''* * * that a specific definition of 'damage' is needed to evaluate the impact of this proposal.'' PMMA adds ''* * * the language of the proposed rule is vague.'' TFI and NPGA argue not only that the requirement ''* * * is vague and fails to give regulated parties the requisite certainty to enable compliance'' but also that the proposal ''* * * does not accomplish the desired goals of NTSB Recommendation H–92–6.'' The last comment seems to contradict NTSB's opinion, as NTSB was one of only two commenters agreeing with the proposal. The other was the Nuclear Energy Institute.

RSPA believes there is a need to collect this information as recommended by NTSB. The potential burden on operators is offset by the safety information that will be provided. For example, such reporting can provide information concerning packaging integrity, particularly the circumstances under which a packaging is able to withstand a collision or accident without releasing its contents. The incident data base is expanded to include ''near miss'' or ''close call'' incidents which, because of the quantity and type of hazardous materials present, have the potential for significant consequences.

Additionally, collecting this information allows for examination of the circumstances (packaging, procedures, training) to determine if there may be ways to avoid the actual set of incidents that pose the greatest risk. This information also provides an indication of a packaging's ability to survive forces encountered in the transportation environment. Finally, this data would provide ''success stories'' and illustrations of a packagings robustness. The converse is also true. If most times that a packaging is in an accident and its damage results in a hazardous materials release, it may point to the inadequacy of the packaging requirements. Accurate data will prevent safety gaps as well as aid in determining how to allocate limited funds of the regulated community to provide the greatest safety benefits.

However, RSPA also agrees with some of the concerns of the commenters. For example, the ONEDO–Nalco Company argues that smaller bulk packagings, such as IBCs, are handled, loaded, and unloaded more frequently than larger containers so that minor damage ''* * * is relatively common.'' TFI and NPGA noted that the NTSB recommendation focused only on cargo tanks, while RSPA's proposal expanded the concept to other bulk packagings. Therefore, in this final rule, RSPA is adopting the proposal only in regards to reporting damage to specification cargo tanks over a 1000-gallon capacity. In addition, we clarify what is reportable damage. Structural damage is damage considered

serious enough to bring into question the integrity of the cargo tank. A cargo tank that requires subsequent replacement or repair due to the damage sustained in the accident for other than cosmetic reasons falls into this category. Lading retention system consists of the basic containment (*e.g.*, tank) and any associated appurtenances or equipment (*e.g.*, piping and valves) that, if seriously damaged, could result in the release of the contents of the cargo tank. Examples of when an incident report is required and when one is not required follow. If there is doubt, the incident should be reported.

Incident report required	No incident report required
Damage to an outlet valve that affects seating and requires replacement.	Handle broken or knocked off valve—but otherwise undamaged.
Serious damage that, if worse, could have resulted in the loss of the contents of the cargo tank. Damage to outlet lines that contain hazardous materials during transportation are in this category.	Serious damage that, even if worse, would not have resulted in the loss of the contents of the cargo tank. Damage to outlet lines that are normally not charged during transportation are in this category.
Cargo tank damage that requires professional inspection or recertification to ensure it is capable of meeting requirements..	Minor damage that obviously will not affect continuation of the cargo tank in service.
Cargo tank damage that requires immediate or subsequent repair because of questions about cargo tank integrity.	Cargo tank damage that requires repair for cosmetic reasons only.

RSPA may address this issue in a future rulemaking if it determines that data needs require additional information for other bulk packagings. For instance, it is our understanding that AAR maintains extensive accident data that could be correlated to damage and releases. Access to this data or reports based on the data may negate future need for its collection via DOT F 5800.1. We will explore options in this area with the rail industry. In addition, information on damage to certified cargo tanks of 1000 gallons or more capacity that do not result in a release will be analyzed over the next several years to determine its usefulness in practice and if further rulemaking is needed.

I. Undeclared Shipments of Hazardous Materials That Do Not Result in a Release

Reducing undeclared shipments of hazardous materials is a high priority of the Department. Undeclared shipments are apt to be in substandard packages and undermine hazard communication that is vital in an emergency. Undeclared shipments, particularly when offered for transportation or transported by air, pose a significant safety problem because of the potential for improper packing, handling, and failure to communicate the hazard. Emergency responders and transportation workers are unaware of the presence of undeclared hazardous materials. Certain hazardous materials that are forbidden for air transportation may make their way onto a passenger-carrying or cargo-only aircraft, and may inadvertently be handled in an unsafe manner by transportation workers. In a hazardous material release from an undeclared shipment, the crew does not know what the hazardous material is, or what response measures to take.

Commenters agreed that undeclared shipments posed a great danger, however, many commenters did not support this proposal. While VOHMA agrees that undeclared shipments are ''* * * one of our most significant problems,'' it notes that carriers ''* * * lack the resources to remove such seals, unpack the container to inspect the cargo within * * *'' VOHMA also notes in its comments that ''[t]he carrier should not be held responsible by the regulations for declaring dangerous cargoes * * *'' Others supported the concern that this could put the carriers in a difficult position of being responsible to ensure that all shipments were prepared properly. Some commenters state that a reporting requirement specific to undeclared hazardous materials would expose their companies to undue liability and possible enforcement actions for accepting an undeclared shipment. Other commenters state that this requirement would place carriers in an enforcement role.

A number of commenters, including the Air Line Pilots Association, International (ALPA), CHP, and the NTSB support reporting undeclared shipments when discovered in transportation. ALPA states this problem is ''* * * one of, if not the greatest potential risks to passengers, aircraft, and crew.''

We believe that information on undeclared shipments should be collected and that the incident report form is the most accessible method for collecting such data. Requiring reports of undeclared hazardous materials discovered in transportation can help in several ways. For example, problem shippers can be identified, and outreach and enforcement can be used to reduce the chance of recurrence. In addition, reporting can also help define the extent of the problem, establish trends, and help gauge the effectiveness of efforts to reduce undeclared shipments. Such a requirement is consistent with the current emphasis by the Department on this area. Accordingly, RSPA is adopting, as proposed, the requirement to submit an incident report when an undeclared shipment of hazardous materials is discovered. This requirement applies to parties who are likely to discover undeclared shipments and who will benefit greatly from a reduction of such shipments, which is a goal of this rulemaking.

RSPA is sensitive to problems noted by commenters concerning the amount of information that is considered sufficient to give a person (other than the original offeror) actual or constructive knowledge of the presence of a hazardous material. In a separate proceeding (Docket No. RSPA–01–10380), RSPA is formulating additional guidance on the factors that enforcement agencies consider relevant to a determination whether a carrier knew or should have known that an ''undeclared'' shipment contained a hazardous material, based on comments submitted in writing and at a June 19, 2002 public meeting.

This rule does not change the ''knowingly'' standard for civil penalty liability in 49 U.S.C. 5123, nor does it create any increased duty to examine all packages for the presence of hazardous material or affect the responsibility of a carrier or other person to refuse to transport a package that it knows or should know contains a hazardous material. The requirement to report the discovery of an undeclared hazardous material is not intended to create a ''compliance trap.'' Enforcement action is focused on the person who initially offered the undeclared hazardous material for shipment, not the person who subsequently received a shipment that was not properly marked, labeled, placarded, and described on shipping papers. In addition, there is no basis for

enforcement action against a person who accepted or handled an undeclared hazardous material when it had no reason to know of the presence of the hazardous material.

J. Notifying Shippers of Incidents

We proposed to require the person responsible for completing an incident report to provide a copy of the report to the shipper whose packages were the subject of the report. This proposal responded to NTSB Recommendation R–89–52, that recommends requiring carriers reporting hazardous materials incidents under the provisions of § 171.16 to notify shippers whose hazardous materials shipments are involved. NTSB is concerned that shippers are not receiving information about packages that are prone to failure during transportation.

Some commenters who supported the proposal cited the importance this information could provide for the shipper in identifying problem packagings or methods. The Glidden Company indicated notification would provide it ''* * * with valuable information into possible reasons how and why packages are damaged in transport.'' This reasoning is echoed by BASF who stated that the notification would ''* * * provide valuable information into possible reasons for package failure or damage during transport,'' and also by Utility Solid Waste Activities Group who expressed ''* * * such notification could provide a strong safety incentive and would help prevent additional incidents where the offeror's packaging is at fault.''

Many other commenters opposed the proposal for a number of different reasons. One commenter stated that the incident report may not be forwarded to the appropriate company or person within that company, essentially eliminating the opportunity for corrective action. The Air Transport Association (ATA) stated that if there is a shipper's name and address on the shipping paper, it may not be the location from which the material was originally shipped. In addition, as VOHMA noted, ''Often, the carrier accepts the freight container from [a] forwarder listing that party as the shipper of record or consignor'' thus, making the original shipper impossible to find by the reporter of the incident. NTTC observed that carriers may not know the identity of the true shipper of a given product due to the intervention of forwarders, brokers, and third party logistics providers.

Other commenters stated that the reports were an increased burden for the reporter and many reports may be of little or no interest to shippers. Safety-Kleen asserted that ''* * * the majority of hazardous waste generators do not want to be notified when small amounts of material have leaked * * this [proposal] places an unfair burden on the hazardous waste carriers.''

We believe that some type of shipper notification is incorporated into most standard business practices to account for shipment tracking, product loss, or damage reporting by carriers and consignees, and may be replicated by the proposed notification. The comments of several shippers supported this view. For example, Norfolk Southern Railway Company stated it ''* * * already voluntarily provides copies to its shippers * * *'' and that ''* * * reports are sent to the shippers at the same time they are submitted to RSPA.'' Chevron/Phillips noted that companies ''* * * already support this activity and have detailed reporting requirements in contracts and service agreements.''

We agree with NTSB and others that there are benefits to shippers being made aware of incidents involving their packages; however, for the reasons discussed above we believe it is not appropriate to impose the burden of notification on incident reporters. We believe that RSPA, along with FAA, FMCSA, Federal Railroad Administration (FRA) and the United States Coast Guard (USCG) can do a better job of ensuring appropriate corrective action by selective notification of shippers and others, as warranted by analysis of incidents, and by working towards making incident report information generally available on RSPA's website. Notification from DOT would carry more weight and prompt a more immediate response from shippers. Also, enhanced analysis of incidents, as enabled by this final rule, will allow us to better identify problems involving packagings, including those problems that may occur at different locations of a company, or among different companies.

How incident data can be analyzed was demonstrated in 2001, when the Intermodal Hazardous Materials Program (IHMP) office reviewed incident data for companies whose shipments were involved in a high proportion of incidents relative to other shippers. Incident data from January 1998 to October 2000 served as a basis of the review. The analysis of this data revealed that a large number of incidents reported by carriers during this 34-month period involved shipments from a small number (less than 40) companies. The IHMP Director sent letters to these companies, informing them of their incidents and detailing the results of the IHMP incident analysis. Each letter included information on the numbers of yearly incidents, reporting carriers, types of commodities and packages involved, locations where the shipments originated, reported incident casual factors, and reported monetary damages.

The IHMP letters generated significant positive feedback from shippers and heightened their awareness to potential internal problem areas. Several companies expressed appreciation to DOT for notifying them about these incidents. Some shippers stated that they were unaware of these incidents, others that they had received only partial notifications from their carriers, and others were surprised to discover that summary incident data was readily available on RSPA's Office of Hazardous Materials Safety website. Where appropriate, shippers took action to reduce the likelihood of reoccurrence of incidents.

RSPA believes that this type of review and contact by DOT better serves the affected parties. We anticipate conducting ongoing analyses to detect problems, and are working closely with the modal administrations to improve analysis and information sharing capabilities.

The modal administrations will have access to incident data and information and may conduct similar reviews if they elect to do so. RSPA has provided FAA's Office of Internal Security and Hazardous Materials an electronic summary of all hazardous materials incidents reported since 1993. As FAA special agents conduct hazmat shipper inspections and shipper outreach visits, they will individually review a summary of relevant incident histories with each shipper. FAA and RSPA will develop a system to electronically share information concerning incidents, discrepancies, inspections, enforcement, exemptions, and registrations. This will assist in the identification and analysis of problems and trends related to transportation of hazardous materials and will be used to notify shippers, or others, when problems become evident. Until this system is developed and implemented, FAA will provide copies of incidents related to the air mode to the relevant shippers.

As previously indicated, summaries of incident information are currently available to all shippers and carriers at our website. Increasing awareness of this option and increasing ease of data access are additional avenues we will explore to ensure shippers are aware of

incidents involving materials they have offered for transportation.

Miscellaneous Issues

Publishing Reports on the Internet

RSPA received several comments concerning the availability of completed incident report forms through the internet via RSPA's website. Several commenters voiced concern about this issue, mainly citing privacy concerns. Currently, any completed incident report is considered a public document and available through RSPA. Making these public documents available through the internet would meet initiatives in the government to facilitate information collection through electronic means. However, any information that is currently withheld under existing law would remain withheld if incident reports are made available through the internet. RSPA will be reviewing this issue in the future; however, no additional rulemaking action is necessary to make these documents electronically available.

New Definitions

We are adopting a new definition in § 171.8 for ''unintentional release''. We are revising the definition for ''undeclared hazardous material shipment'' for further clarification.

Hazardous Waste Manifest

We are removing the requirement in § 171.16 to attach a hazardous waste manifest to the incident report form when a release involves a hazardous waste. The revised incident report form requires the hazardous waste manifest number to be reported and provides a field for entering the number. Through this reference, we will be able to access the hazardous waste manifest, if needed, through the appropriate officials. In addition, we are removing the requirements for: (1) An estimate of the quantity of waste removed from the scene; (2) the name and address of the facility to which it was taken; and (3) the manner of disposition of any removed waste. This information is already available as a result of EPA's hazardous waste manifest regulations; thus, continued reporting of this information to RSPA is unnecessary. Removing these requirements eliminates reporting information that is obtainable through other sources. Therefore, RSPA has adopted these amendments as proposed.

Record Retention Location

This final rule requires that an incident report must be retained for two years at either the reporter's principal place of business or another record retention site provided the report is available at the reporter's principal place of business within 24 hours of request. We are adopting this amendment as proposed, which removes the requirement to seek an approval to store the report at a place other than the reporter's principal place of business. Adopting this proposal will provide flexibility in maintaining records without the need for an approval from DOT. In addition, this allows electronic versions to be retained, even though the server the document is located on is outside the principal place of business.

Incidents at Registered Cargo Tank Facilities

In the NPRM, we asked a series of questions concerning fatalities that may occur at registered cargo tank repair facilities during cargo tank inspection and repair operations. Such fatalities generally result because hazardous materials residue in the cargo tank is not removed before work is done on the tank. We did not propose any changes specific to this issue in the NPRM, but asked for comments to assist us in determining whether we should propose to collect information concerning such accidents in a future rulemaking. Most of the commenters that addressed this issue, including NTTC and the International Brotherhood of Teamsters, supported collecting data on these accidents. One commenter, Farmland Industries, suggested that RSPA does not have the authority to require reporting of incidents that are not related to the actual transportation of a hazardous material.

On December 29, 1970, Congress enacted the Occupational Safety and Health Act of 1970 (OSH Act) for the purpose of assuring safe and healthy workplaces. Under the OSH Act, every employer engaged in a business affecting commerce has a general duty to furnish each of its employees a workplace free from recognized hazards causing, or likely to cause, death or serious physical harm. In addition, employers are required to comply with all safety and health standards issued under the OSH Act that are applicable to working conditions involved in their businesses. In accordance with OSHA standards, cargo tank repair facilities must report accidents to OSHA or to a state agency responsible for occupational safety and health, if appropriate. OSHA data for the period 1985–1997 indicate that there were 17 fatalities during the period resulting from repair work performed on cargo tanks. The OHSA incident reports clearly conclude that the cause of these incidents was a failure to comply with existing OSHA and/or HMR requirements. Because OSHA already collects fairly detailed reports concerning accidents at cargo tank repair facilities, we do not believe that imposing an additional reporting requirement is necessary or appropriate.

State Notification

We were contacted by a state official who requested that we require incidents meeting the immediate notification criteria in § 171.15 to be reported to the State in which the incident occurred. We disagree. A State may require immediate, oral accident/incident reports for local emergency response purposes. Further, any State may request that NRC notify it of incidents occurring within the State.

IV. Summary and Conclusion

The following are the major changes to the current HMR reporting requirements and to DOT Form F 5800.1 that we are making in this final rule:

(1) Reporting of incidents involving a specification cargo tank with a capacity of 1,000 gallons or greater that receives structural damage that may adversely affect the cargo tanks's ability to retain lading even when no hazardous material in released.

(2) Reporting discoveries of undeclared hazardous material shipments.

(3) Updating incident reports when significant new information becomes available.

(4) Requiring the person in physical control of a hazardous material during transportation to report an incident.

(5) Excepting small releases of specified materials that pose the least hazard from reporting requirements.

(6) Restructuring the form to utilize failure codes to obtain information on packaging failures.

V. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under Section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not a significant regulatory action under the Regulatory Policies and Procedures of the Department of Transportation (44 *FR* 11034). A regulatory evaluation that considers various regulatory alternatives is available for review in the public docket.

The costs of these regulations identified in the regulatory evaluation

are attributed to: (1) Expansion of reporting requirements to persons other than a carrier in possession of a hazardous material during transportation; (2) implementation of a requirement to update incident reports under certain conditions; and (3) expansion of reporting requirements to incidents involving cargo tanks where no hazardous material is released. Reductions in the total costs associated with incident reporting requirements are attributed to implementation of an electronic filing option and expansion of current exceptions to the reporting requirements. The expected reductions in total costs generally offset the anticipated cost increases; thus, the requirements of the final rule should result in only minimal increased costs of compliance.

While it is difficult to estimate the net benefit resulting from this rulemaking, we believe that the revisions to the incident reporting requirements will greatly enhance our ability to develop strategies to reduce the risks associated with the transportation of hazardous materials. The non-quantifiable benefit of increased safety through reducing the incidence of undeclared shipments is expected to be far greater than the negligible cost increase to the regulated community.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts state, local, and Indian tribe requirements, but does not propose any regulation with substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject item number 4 above and preempts state, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This final rule is necessary to increase the usefulness of data collected for risk analysis and management by government and industry and, where possible, provide relief from regulatory requirements.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if we issue a regulation concerning any of the covered subjects, we must determine and publish in the **Federal Register** the effective date of Federal preemption. The preemption date of this rule is January 1, 2004.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive order 13175 (''Consultation and Coordination with Indian Tribal Governments''). This final rule does not have tribal implications, does not impose substantial direct compliance costs, and is not required by statute. Consequently, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Executive Order 13272

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant impact on a substantial number of small entities. Based on the assessment in the final regulatory evaluation, I hereby certify that, while the final rule applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. A detailed Regulatory Evaluation is available in the Docket.

Potentially affected small entities. The revisions in this final rule will apply to persons in physical control of a hazardous material during transportation in commerce. Such persons primarily include motor carriers, air carriers, vessel operators, rail carriers, temporary storage facilities, and intermodal transfer facilities. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration, the definition of ''small business'' has the same meaning as under the Small Business Act (15 CFR Parts 631–657c). Therefore, since no such special definition has been established, RSPA employs the thresholds (published in 13 CFR 121.201) of 1,500 employees for air carriers (NAICS Subgroup 481), 500 employees for rail carriers (NAICS Subgroup 482), 500 employees for vessel operators (NAICS Subgroup 483), $18.5 million in revenues for motor carriers (NAICS Subgroup 484), and $18.5 million in revenues for warehousing and storage companies (NAICS Subgroup 493). Of the approximately 116,000 entities to which the proposals in this final rule would apply (104,000 of which are motor carriers), we estimate that about 90 percent are small entities. Based on historical data, we estimate approximately 17,810 annual responses.

Potential cost impacts. The revision to expand reporting requirements to any person in physical possession of a hazardous material while it is being transported in commerce will primarily affect storage and in-transit storage facilities. We estimate there are approximately 6,500 warehousing and storage entities subject to this requirement which will incur the total increased compliance costs of about $84,000. We estimate that expanding the reporting requirements will increase the number of incident reports submitted each year by about 11.45 percent of the 17,810 total annual responses, or approximately 2,180 reports. Taken on a one-to-one report to entity ratio, we estimate a cost of approximately $39/year/company.

The revision to require updating of incident reports under certain conditions applies to all persons subject to the HMR incident reporting regulations. We estimate that this final rule will result in about 800 additional updates to reports each year for a total annual cost of $4,800. Taken on a one-to-one report to entity ratio, we estimate a cost of $6.00/year/company.

The revision to require reporting of certain incidents involving cargo tanks that do not result in a release of hazardous materials will apply to about 104,000 motor carriers. We estimate that this revision will result in about an increase of about 16 percent of the 17,810 total annual responses, or approximately 2,975 additional incident reports each year. On a one-to-one report/entity basis, motor carriers will incur increased compliance costs of approximately $114,240 or about $38/year/company.

The revision to require reporting of undeclared shipments of hazardous materials discovered during transportation will apply to all persons subject to the HMR incident reporting regulations. We estimate that this final rule will result in an increase of approximately 8 percent of the 17,810 incidents reports submitted each year, or approximately 1,500 reports. Taken on a one-to-one report/entity ratio, we estimate the corresponding increased compliance costs of $57,600 to be approximately $38/year/company.

Potential cost savings. The revision in the final rule that will permit electronic filing of incident reports and expand the current exceptions from incident reporting requirements will offset the increased compliance costs described above. The potential savings attributable to the revisions to the final rule total about $276,000. The additional potential costs attributable to the revisions to the final rule total about $275,712, for a net savings of approximately $300.

Consideration of alternate proposals for small businesses. The Regulatory Flexibility Act suggests that it may be possible to establish exceptions and differing compliance standards for small businesses and still meet the objectives of the applicable regulatory statutes. However, given the large numbers of small businesses, as defined for purposes of the Regulatory Flexibility Act, in hazardous materials transportation, we do not believe that it would be possible to establish such differing standards and still accomplish the objectives of federal hazardous materials transportation law. The information provided in hazardous materials incident reports serves as the basis for critical RSPA safety functions, including identification of safety problems, regulations development, training programs, outreach efforts, and enforcement strategies. The risks posed by a hazardous material offered for transportation or transported by a small entity are the same as the risks posed by the same hazardous material when offered for transportation or transported by a large entity. Thus, it is entirely reasonable and appropriate for the HMR incident reporting requirements to apply equally to any person who offers for transportation or transports hazardous materials in commerce.

Conclusion. Based on the above analysis, we certify that while the revisions in this final rule will affect a significant number of small businesses or other small entities, there will be no substantial economic impact on these small businesses.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. RSPA has a current information collection approval under OMB No. 2137–0039, Hazardous Materials Incident Reports.

The average number of incident reports RSPA received for the years 1997—2000 is about 17,300, and for the years 1995—2000 is about 16,000. Our regulatory evaluation for this final rule uses a base number of 17,000 annual incident reports.

As a result of this final rule, there was a modest increase in annual burden and costs. OMB approved this information collection as proposed under this rule on August 30, 2001. The following figures are based on receiving 17,000 incident reports per year and only include estimates for written incident reports:

Total Annual Respondents: 1,781.
Total Annual Responses: 17,810.
Total Annual Burden Hours: 23,746.
Total Annual Burden Cost: $569,904.

Requests for a copy of the information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This final rule imposes no mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more to either state, local, or tribal governments, in the aggregate, or to the private sector.

I. Environmental Assessment

The revisions in this final rule will increase the quality of data collected on hazardous materials spills, increasing our ability to evaluate potential packaging problems that result in releases to the environment. Thus, the revisions should produce a small net benefit to the environment by improving the data sources used in regulatory development. Therefore, we find that there are no significant environmental impacts associated with this final rule.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and record keeping requirements.

■ In consideration of the foregoing, we are amending 49 CFR part 171 as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 2. In § 171.8 the following definitions are added in alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Undeclared hazardous material means a hazardous material that is (1) subject to any of the hazard communication requirements in subparts C (Shipping Papers), D (Marking), E (Labeling), and F (Placarding) of Part 172 of this subchapter, or an alternative marking requirement in Part 173 of this subchapter (such as §§ 173.4(a)(10) and 173.6(c)), and (2) offered for transportation in commerce without any clear indication of the presence of the hazardous material in or on at least one of the following: an accompanying shipping paper, the outer package, the transport vehicle or freight container, or another written statement by the person

offering the hazardous material for transportation.

* * * * *

Unintentional release means the escape of a hazardous material from a package on an occasion not anticipated or planned. This includes releases resulting from collision, package failures, human error, criminal activity, negligence, improper packing, or unusual conditions such as the operation of pressure relief devices as a result of over-pressurization, overfill or fire exposure. It does not include releases, such as venting of packages, where allowed, and the operational discharge of contents from packages.

* * * * *

■ 3. Section 171.15 is revised to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

(a) *General.* As soon as practical but no later than 12 hours after the occurrence of any incident described in paragraph (b) of this section, each person in physical possession of the hazardous material must provide notice by telephone to the National Response Center (NRC) on 800–424–8802 (toll free) or 202–267–2675 (toll call). Notice involving an infectious substance (etiologic agent) may be given to the Director, Centers for Disease Control and Prevention, U.S. Public Health Service, Atlanta, GA, 800–232–0124 (toll free), in place of notice to the NRC. Each notice must include the following information:

(1) Name of reporter;

(2) Name and address of person represented by reporter;

(3) Phone number where reporter can be contacted;

(4) Date, time, and location of incident;

(5) The extent of injury, if any;

(6) Class or division, proper shipping name, and quantity of hazardous materials involved, if such information is available; and

(7) Type of incident and nature of hazardous material involvement and whether a continuing danger to life exists at the scene.

(b) *Reportable incident.* A telephone report is required whenever any of the following occurs during the course of transportation in commerce (including loading, unloading, and temporary storage):

(1) As a direct result of a hazardous material—

(i) A person is killed;

(ii) A person receives an injury requiring admittance to a hospital;

(iii) The general public is evacuated for one hour or more;

(iv) A major transportation artery or facility is closed or shut down for one hour or more; or

(v) The operational flight pattern or routine of an aircraft is altered;

(2) Fire, breakage, spillage, or suspected radioactive contamination occurs involving a radioactive material (see also § 176.48 of this subchapter);

(3) Fire, breakage, spillage, or suspected contamination occurs involving an infectious substance other than a diagnostic specimen or regulated medical waste;

(4) A release of a marine pollutant occurs in a quantity exceeding 450 L (119 gallons) for a liquid or 400 kg (882 pounds) for a solid; or

(5) A situation exists of such a nature (*e.g.*, a continuing danger to life exists at the scene of the incident) that, in the judgment of the person in possession of the hazardous material, it should be reported to the NRC even though it does not meet the criteria of paragraph (b) (1), (2), (3) or (4) of this section.

(c) *Written report.* Each person making a report under this section must also make the report required by § 171.16 of this subpart.

Note to § 171.15: Under 40 CFR 302.6, EPA requires persons in charge of facilities (including transport vehicles, vessels, and aircraft) to report any release of a hazardous substance in a quantity equal to or greater than its reportable quantity, as soon as that person has knowledge of the release, to DOT's National Response Center at (toll free) 800–424–8802 or (toll) 202–267–2675.

■ 4. Section 171.16 is revised to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

(a) *General.* Each person in physical possession of a hazardous material at the time that any of the following incidents occurs during transportation (including loading, unloading, and temporary storage) must submit a Hazardous Materials Incident Report on DOT Form F 5800.1 (01/2004) within 30 days of discovery of the incident:

(1) Any of the circumstances set forth in § 171.15(b);

(2) An unintentional release of a hazardous material or the discharge of any quantity of hazardous waste;

(3) A specification cargo tank with a capacity of 1,000 gallons or greater containing any hazardous material suffers structural damage to the lading retention system or damage that requires repair to a system intended to protect the lading retention system, even if there is no release of hazardous material; or

(4) An undeclared hazardous material is discovered.

(b) *Providing and retaining copies of the report.* Each person reporting under this section must—

(1) Submit a written Hazardous Materials Incident Report to the Information Systems Manager, DHM–63, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590–0001. Submit an electronic Hazardous Material Incident Report to the Information System Manager, DHM–63, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590–0001 at *http://hazmat.dot.gov;*

(2) For an incident involving transportation by aircraft, submit a written or electronic copy of the Hazardous Materials Incident Report to the FAA Security Field Office nearest the location of the incident; and

(3) Retain a written or electronic copy of the Hazardous Materials Incident Report for a period of two years at the reporting person's principal place of business. If the written or electronic Hazardous Materials Incident Report is maintained at other than the reporting person's principal place of business, the report must be made available at the reporting person's principal place of business within 24 hours of a request for the report by an authorized representative or special agent of the Department of Transportation.

(c) *Updating the incident report.* A Hazardous Materials Incident Report must be updated within one year of the date of occurrence of the incident whenever:

(1) A death results from injury caused by a hazardous material;

(2) There was a misidentification of the hazardous material or package information on a prior incident report;

(3) Damage, loss or related cost that was not known when the initial incident report was filed becomes known; or

(4) Damage, loss, or related cost changes by $25,000 or more, or 10% of the prior total estimate, whichever is greater.

(d) *Exceptions.* Unless a telephone report is required under the provisions of § 171.15 of this part, the requirements of paragraphs (a), (b), and (c) of this section do not apply to the following incidents:

(1) A release of a minimal amount of material from—

(i) A vent, for materials for which venting is authorized;

(ii) The routine operation of a seal, pump, compressor, or valve; or

(iii) Connection or disconnection of loading or unloading lines, provided

that the release does not result in property damage.

(2) An unintentional release of hazardous material when:

(i) The material is properly classed as—

(A) ORM–D; or

(B) a Packing Group III material in Class or Division 3, 4, 5, 6.1, 8, or 9;

(ii) Each package has a capacity of less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids;

(iii) The total aggregate release is less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids; and

(iv) The material is not—

(A) Offered for transportation or transported by aircraft,

(B) A hazardous waste, or

(C) An undeclared hazardous material.

(3) An undeclared hazardous material discovered in an air passenger's checked or carry-on baggage during the airport screening process. (For discrepancy reporting by carriers, see § 175.31 of this subchapter.)

■ 5. Section 171.21 is revised to read as follows:

§ 171.21 Assistance in investigations and special studies.

(a) A shipper, carrier, package owner, package manufacturer or certifier, repair facility, or person reporting an incident under the provisions of § 171.16 must:

(1) Make all records and information pertaining to the incident available to an authorized representative or special agent of the Department of Transportation upon request; and

(2) Give an authorized representative or special agent of the Department of Transportation reasonable assistance in the investigation of the incident.

(b) If an authorized representative or special agent of the Department of Transportation makes an inquiry of a person required to complete an incident report in connection with a study of incidents, the person shall:

(1) Respond to the inquiry within 30 days after its receipt or within such other time as the inquiry may specify; and

(2) Provide true and complete answers to any questions included in the inquiry.

Issued in Washington, DC on November 19, 2003 under the authority delegated in 49 CFR Part 1.

Samuel G. Bonasso,

Deputy Administrator, Research and Special Programs Administration.

Attachment 1—Hazardous Materials Incident Report

Note: This attachment will not appear in the Code of Federal Regulations.

BILLING CODE 4910–60–P

U.S. Department of Transportation
Research and Special Programs
Administration

Hazardous Materials Incident Report

Form Approval OMB No. 2137-0039

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 2137-0039. The filling out of this information is mandatory and will take 96 minutes to complete.

INSTRUCTIONS: Submit this report to the Information Systems Manager, U.S. Department of Transportation, Research and Special Programs Administration, Office of Hazardous Materials Safety, DHM-63, Washington, D.C. 20590-0001. If space provided for any item is inadequate, use a seperate sheet of paper, identifying the entry number being completed. Copies of this form and instructions can be obtained from the Office of Hazardous Materials Website at http://hazmat.dot.gov. If you have any questions, you can contact the Hazardous Materials Information Center at 1-800-HMR-4922 (1-800-467-4922) or online at http://hazmat.dot.gov.

PART I - REPORT TYPE

1. This is to report:
   - ☐ A) A hazardous material incident
   - ☐ B) An undeclared shipment with no release
   - ☐ C) A specification cargo tank 1,000 gallons or greater containing any hazardous materials that (1) received structural damage to the lading retention system or damage that requires repair to a system intended to protect the lading retention system and (2) did not have a release.

2. Indicate whether this is: ☐ An initial report ☐ A supplemental (follow-up) report ☐ Additional Pages

PART II - GENERAL INCIDENT INFORMATION

3. Date of Incident: _____ 4. Time of Incident (use 24-hour time): _____

5. Enter National Response Center Report Number (if applicable): _____

6. If you submitted a report to another Federal DOT agency, enter the agency and report number: _____

7. Location of Incident: City: _____ County: _____ State: _____ ZIP Code (if known): _____

Street Address/Mile Marker/Yardname/Airport/Body of Water/River Mile _____

8. Mode of Transportation ☐ Air ☐ Highway ☐ Rail ☐ Water

9. Transportation Phase ☐ In Transit ☐ Loading ☐ Unloading ☐ In Transit Storage

10. Carrier/Reporter
Name _____
Street _____
City _____ State _____ ZIP Code _____
Federal DOT ID Number _____ Hazmat Registration Number _____

11. Shipper/Offeror
Name _____
Street _____
City _____ State _____ ZIP Code _____
Waybill/Shipping Paper _____ Hazmat Registration Number _____

12. Origin (if different from shipper address)
Street _____
City _____ State _____ ZIP Code _____

13. Destination
Street _____
City _____ State _____ ZIP Code _____

14. Proper Shipping Name of Hazardous Material: _____

15. Technical/Trade Name: _____

16. Hazardous Class/Division: _____

17. Identification Number: _____ (E.g. UN2764, NA 2020)

18. Packing Group: _____ (if applicable)

19. Quantity Released: _____ (Include Measurement Units)

20. Was the material shipped as a hazardous waste? ☐ Yes ☐ No If yes, provide the EPA Manifest Number: _____

21. Is this a Toxic by Inhalation (TIH) material? ☐ Yes ☐ No If yes, provide the Hazard Zone: _____

22. Was the material shipped under an Exemption, Approval, or Competent Authority Certificate? ☐ Yes ☐ No
If yes, provide the Exemption, Approval, or CA number: _____

23. Was this an undeclared hazardous materials shipment? ☐ Yes ☐ No

At this point, the answer to Part I, Question 1 above determines which Part to complete next:
If you checked 1A or 1C, go to Part IV. If you checked 1B, and the mode of transportation is Air, go to Part V. If you checked 1B, and the mode of transportation is not Air, go to Part III.

PART III - PACKAGING INFORMATION

24. Check Packaging Type (check only one - if more than one, list type of packaging, copy Part III, and complete for each type:

☐ Non-bulk ☐ IBC ☐ Cargo tank Motor Vehicle (CTMV) ☐ Tank Car

☐ Cylinder ☐ RAM ☐ Portable Tank ☐ Other _____

25. See instructions and enter the appropriate failure codes found at the end of the instructions. Be sure to enter the codes from the list that corresponds to the particular packaging type checked above. Enter the number of codes as appropriate to describe the incident. Enter the most important failure point in line 1. If there are more than two failure points, provide in this format in part VI.

1. What Failed: ____ ____ ____ How Failed: ____ ____ ____ Causes of Failure: ____ ____ ____

2. What Failed: ____ ____ ____ How Failed: ____ ____ ____ Causes of Failure: ____ ____ ____

26a. Provide the packaging identification markings, if available.

Identification Markings: _____

(Examples: 1A1/Y1.4/150/92/USA/RB/93/RL, UN31H1/Y0493/USA/M9339/10800/1200, DOT - 105A - 100W (RAIL), DOT 406 (HIGHWAY), DOT 51, DOT 3-A)

26b. For Non-bulk, IBC, or non-specification packaging, if identification markings are incomplete or unavailable, see instructions and complete the following:

Single Package or Outer Packaging:

Packaging Type: _____

Material of Construction: _____

Head Type (Drums only): ☐ Removable ☐ Non - Removable

Single Package or Inner Packaging (if any):

Packaging Type: _____

Material of Construction: _____

27. Describe the package capacity and the quantity:

Single Package or Outer Packaging:

Package Capacity: _____

Amount in Package: _____

Number in Shipment: _____

Number Failed: _____

Single Package or Inner Packaging (if any):

Package Capacity: _____

Amount in Package: _____

Number in Shipment: _____

Number Failed: _____

28. Provide packaging construction and test information, as appropriate:

Manufacturer: _____ Manufacture Date: _____

Serial Number: _____ Last Test Date: _____

Material of Construction: _____ (if Tank Car, CTMV, Portable Tank, or Cylinder)

Design Pressure: _____ (if Tank Car, CTMV, Portable Tank)

Shell Thickness: _____ (if Tank Car, CTMV, Portable Tank)

Head Thickness: _____ (if Tank Car, CTMV)

Service Pressure: _____ (if Cylinder)

If valve or device failed:

Type: _____ Manufacturer: _____ Model: _____

29. If the packaging is for Radioactive Materials, complete the following:

Packaging Category: ☐ Type A ☐ Type B ☐ Type C ☐ Excepted ☐ Industrial

Packaging Certification: ☐ Self Certified ☐ U.S. Certification Certification Number _____

Nuclide(s) Present: _____ Transport Index: _____

Activity: _____ Critical Safety Index: _____

PART IV - CONSEQUENCES

30. Result of Incident (check all that apply): ☐ Spillage ☐ Fire ☐ Explosion ☐ Material Entered Waterway/Storm Sewer ☐ Vapor (Gas) Dispersion ☐ Environmental Damage ☐ No Release

31. Emergency Response : The following entities responded to the incident: (Check all that apply)

☐ Fire/EMS Report # _____ ☐ Police Report # _____ ☐ In-house cleanup ☐ Other Cleanup

32. Damages: Was the total damage cost more than $500? ☐ Yes ☐ No

If yes, enter the following information: If no, go to question 33.

Material Loss: Carrier Damage: Property Damage: Response Cost: Remediation/Cleanup Cost:

$ _____ $ _____ $ _____ $ _____ $ _____

(See damage definitions in the instructions)

33a. Did the hazardous material cause or contribute to a human fatality? ☐ Yes ☐ No

If yes, enter the number of fatalities resulting from the hazardous material:

Fatalities: Employees _____ Responders _____ General Public _____

33b. Were there human fatalities that did not result from the hazardous material? ☐ Yes ☐ No If yes, how many? _____

34. Did the hazardous material cause or contribute to personal injury? ☐ Yes ☐ No

If yes, enter the number of injuries resulting from the hazardous material:

Hospitalized (Admitted Only): Employees _____ Responders _____ General Public _____

Non-Hospitalized: Employees _____ Responders _____ General Public _____

(e.g.: On site first aid or Emergency Room observation and release)

35. Did the hazardous material cause or contribute to an evacuation? ☐ Yes ☐ No

If yes, provide the following information:

Total number of general public evacuated _____ Total number of employees evacuated _____ Total Evacuated _____

Duration of the evacuation _____ (hours)

36. Was a major transportation artery or facility closed? ☐ Yes ☐ No If yes, how many? _____ (hours)

37. Was the material involved in a crash or derailment? ☐ Yes ☐ No

If yes, provide the following information: Estimated speed (mph): _____ Weather conditions: _____

Vehicle overturn? ☐ Yes ☐ No

Vehicle left roadway/track? ☐ Yes ☐ No

PART V - AIR INCIDENT INFORMATION (please refer to § 175.31 to report a discrepancy for air shipments)

38. Was the shipment on a passenger aircraft? ☐ Yes ☐ No

If yes, was it tendered as cargo, or as passenger baggage?

☐ Cargo ☐ Passenger baggage

39. Where did the incident occur (if unknown, check the appropriate box for the location where the incident was discovered)?

☐ Air carrier cargo facility ☐ Sort center ☐ Baggage area

☐ By surface to/from airport ☐ During flight ☐ During loading/unloading of aircraft

40. What phase(s) had the shipment already undergone prior to the incident? (Check all that apply)

☐ Shipment had not been transported ☐ Transported by air (first flight) ☐ Transport by air (subsequent flights)

☐ Initial transport by highway to cargo facility ☐ Transfer at sort center/cargo facility

PART VI - DESCRIPTION OF EVENTS & PACKAGE FAILURE

Describe the sequence of events that led to the incident and the actions taken at the time it was discovered. Describe the package failure, including the size and location of holes, cracks, etc. Photographs and diagrams should be submitted if needed for clarification. Estimate the duration of the release, if possible. Describe what was done to mitigate the effects of the release. Continue on additional sheets if necessary.

PART VII - RECOMMENDATIONS/ACTIONS TAKEN TO PREVENT RECURRENCE

Where you are able to do so, suggest or describe changes (such as additional training, use of better packaging, or improved operating procedures) to help prevent recurrence. Provide recommendations for improvement to hazardous materials transportation beyond the control of your individual company. Continue on additional sheets if necessary.

PART VIII- CONTACT INFORMATION

Contact's Name (Type or Print): _____ Telephone Number: (___) _____

Contact's Title: _____ Fax Number: (___) _____

Business Name and Address: _____ Hazmat Registration Number (if not already provided):

_____ _____

E-mail Address: _____ Date: _____

Preparer is: ☐ Carrier ☐ Shipper ☐ Facility ☐ Other _____

BILLING CODE 4910–60–C

General Overview for Completing the Hazardous Materials Incident Report—Department of Transportation Form F 5800.1

What Federal Regulation Requires Me To Submit the Report?

The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) require that certain types of incidents be reported to the Research and Special Programs Administration (RSPA). Section 171.15 of the HMR requires an immediate telephonic report (within 12 hours) of certain types of hazardous materials incidents and a follow-up written report. Section 171.16 requires a written report for certain types of hazardous materials incidents within 30 days. Each type of report is explained below.

What Is the Purpose of the Report?

The information you are providing in this report is fundamental to hazardous material transportation risk analysis and risk management by government and industry. It allows us to better understand the causes and consequences of hazardous material transportation incidents. The data is used to identify trends and provide basic program performance measures. It helps to demonstrate the effectiveness of existing regulations and to identify areas where changes should be considered. It also assists all parties, including industry segments and individual companies, in understanding the types and frequencies of incidents, what can go wrong, and possible measures that would prevent their recurrence. Your accurate and complete description of incidents can make a significant contribution to continual safety improvement through better regulations, cooperative partnerships, and individual efforts.

Who Must Complete the Report?

Any person in possession of a hazardous material during transportation, including loading, unloading and storage incidental to transportation, must report to the Department of Transportation (DOT) if certain conditions are met. This means that when the conditions apply for completing the report, the entity having physical control of the shipment is responsible for filling out and filing Form DOT F 5800.1.

For example, if a shipper is carrying hazardous material, the consignee is unloading the material and there is an incident involving this material, the consignee is responsible for filling out and filing the form. However, if the consignee is unloading the hazardous material and causes a hazardous materials incident involving a consignment intended for someone else, the shipper is responsible for filling out and filing the form.

What Definitions Should I Know in Order To Complete the Report?

In order to accurately complete the report, you should be familiar with the following terms. A complete list of definitions is contained in § 171.8.

Bulk packaging—a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment and which has:

(1) A maximum capacity greater than 450 liters (119 gallons) as a receptacle for a liquid;

(2) A maximum net mass greater than 400 kilograms (822 pounds) and a maximum capacity greater than 450 liters (119 gallons) as a receptacle for a solid; or

(3) A water capacity greater than 454 kilograms (1000 pounds) as a receptacle for a gas as defined in § 173.115.

Cargo tank—a bulk packaging which is:

(1) A tank intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings, and closures;

(2) Is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but which, by reason of its size, construction, or attachment to a motor vehicle, is loaded or unloaded without being removed from the motor vehicle; and

(3) Is not fabricated under a specification for cylinders, portable tanks, tank cars, or multi-unit tank car tanks.

Hazardous material—a substance or material that has been determined to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and that has been so designated. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous under the provisions of § 172.101, the Hazardous Materials Table (HMT), and materials that meet the defining criteria for hazard classes and divisions in Part 173.

Hazardous substance—a material, including its mixtures and solutions, that—

(1) Is listed in Appendix A to § 172.101;

(2) Is in a quantity, in one package, which equals or exceeds the reportable quantity (RQ) listed in Appendix A to § 172.101; and

(3) When in a mixture or solution—

(i) For radionuclides, conforms to paragraph 7 of Appendix A to § 172.101.

(ii) For other than radionuclides, is in a concentration by weight which equals or exceeds the concentration corresponding to the RQ of the material, as shown in the following table:

RQ pounds (kilograms)	Concentration by weight	
	Percent	PPM
5000 (2270)	10	100,000
1000 (454)	2	20,000
100 (45.4)	0.2	2,000
10 (4.54)	0.02	200
1 (0.454)	0.002	20

The term hazardous substance does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance in Appendix A to § 172.101, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas).

Hazardous waste—any material that is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR Part 262.

Marine pollutant—a material that is listed in Appendix B to § 172.101 (also see § 171.4) and, when in a solution or mixture of one or more marine pollutants, is packaged in a concentration that equals or exceeds:

(1) Ten percent by weight of the solution or mixture for materials listed in Appendix B; or

(2) One percent by weight of the solution or mixture for materials that are identified as severe marine pollutants in Appendix B.

Undeclared hazardous material–a hazardous material that is:

(1) Subject to any of the hazard communication requirements in subparts C (Shipping Papers), D (Marking), E (Labeling), and F (Placarding) of Part 172 of this subchapter, or an alternative marking requirement in Part 173 of this subchapter (such as §§ 173.4(a)(10) and 173.6(c)); and

(2) Offered for transportation in commerce without any clear indication of the presence of the hazardous material in or on at least one of the following: an accompanying shipping paper, the outer package, the transport vehicle or freight container, or another written statement by the person offering the hazardous material for transportation.

Unintentional release—the escape of a hazardous material from a package on an occasion not anticipated or planned. This includes releases resulting from collision, package failures, human error, criminal activity, negligence, improper packing, or unusual conditions such as the operation of pressure relief devices as a result of over-pressurization, overfill, or fire exposure. It does not include releases, such as venting of packages, where allowed, and the operational discharge of contents from packages.

Additionally, for purposes of reporting on this form, the following definitions should be used:

Lading retention system—a lading retention system consists of those items or equipment that provide containment of hazardous materials at some point during transportation, including loading and unloading. The cargo tank shell, associated piping, and valves are an example of a lading retention system. Dents or damage to a tank requiring repair to an accident protection system guarding the tank are examples of incidents that must be reported. Paint chips and scratches to either the tank or the accident protection system are examples of incidents that do not require reporting.

Major Transportation Artery—a highway, main road or secondary road but not a side street or dirt road. In the case of rail, any rail line except a rail spur.

When Must I Submit a Written Report (DOT Form F 5800.1)?

Under § 171.16, you must submit a written report within 30 days after any of the following:

- An incident that was reported by telephonic notice under § 171.15;
- An unintentional release (see definitions) of a hazardous material during transportation including loading, unloading and temporary storage related to transportation;
- A hazardous waste is released;
- An undeclared shipment with no release is discovered; or
- A specification cargo tank 1,000 gallons or greater containing any hazardous materials that (1) received structural damage to the lading retention system or damage that requires repair to a system intended to protect the lading retention system, and (2) did not have a release.

To clarify the requirement for a report based on structural damage to a specification cargo tank, the table below illustrates some examples:

EXAMPLES TO CLARIFY WHEN TO REPORT STRUCTURAL DAMAGE TO A SPECIFICATION CARGO TANK

Incident report required	No incident report required
Damage to an outlet valve that affects seating and requires replacement.	Handle broken or knocked off valve—but otherwise undamaged.
Serious damage that, if worse, could have resulted in the loss of the contents of the cargo tank. Damage to outlet lines that contain hazardous materials during transportation is in this category.	Serious damage that, even if worse, would not have resulted in the loss of the contents of the cargo tank. Damage to outlet lines that are normally not charged during transportation is in this category
Cargo tank damage that requires professional inspection or recertification to ensure it is capable of meeting requirements.	Minor damage that obviously will not affect continuation of the cargo tank in service.
Cargo tank damage that requires immediate or subsequent repair because of questions about cargo tank integrity.	Cargo tank damage that requires repair for cosmetic reasons only.

When Is a Report Not Required?

You are not required to report a release of a hazardous material if ALL of the following apply:

- The shipment is not being offered for transportation or being transported by air;
- None of the criteria in § 171.15(a) applies;
- The material is not a hazardous waste;
- The material is properly classed as an ORM–D, or a Packing Group III material in Class or Division 3, 4, 5, 6.1, 8, or 9;
- Each package has a capacity of less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids;
- The total aggregate release is less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids;
- The material does not meet the definition of an undeclared hazardous material in § 171.8; AND
- The shipment is an undeclared material discovered in an air passenger's checked or carry-on baggage during the airport screening process.

Also, you are not required to report releases of minimal amounts of material (*i.e.*, a pint or less) released from the manual operation of seals of pumps, compressors, or valves, during the connecting or disconnecting of loading and unloading lines, or, for materials for which venting is authorized, from vents, provided these releases do not result in property damage or trigger any of the telephonic notifications requirements found in § 171.15.

When Must I Make a Telephonic Report?

Under § 171.15, you must provide telephone notice within 12 hours after the incident occurs when one of the following conditions occurs during the course of transportation and is a direct result of the hazardous material:

- A person is killed;
- A person receives an injury requiring admittance to a hospital;
- The general public is evacuated for one hour or more;
- One or more major transportation arteries or facilities are closed for one hour or more;
- The operational flight plan or routine of an aircraft is altered;
- Fire, breakage, spillage or suspected radioactive contamination occurs involving a radioactive material;
- Fire, breakage, spillage or suspected contamination occurs involving an infectious substance other than a diagnostic specimen or regulated medical waste;
- There is a release of a marine pollutant in a quantity exceeding 450 liters (119) gallons) for liquids or 400 kilograms (882 pounds) for solids; or
- A situation exists of such a nature that in the judgment of the person in possession of the hazardous material, it should be reported to DOT's National Response Center even though it does not meet the above criteria.

You may decide that the situation should be reported even though it does not meet any of the above criteria.

Make sure that you request the NRC report number when you make your telephonic report.

What Telephone Number Do I Call To Make an Immediate Notification of a Hazardous Materials Incident?

You must call 800–424–8802 (toll-free) or 202–267–2675 (toll-call) to make a telephonic incident report. This is the number to the National Response Center. This call must be made within 12 hours of the events that trigger this requirement. If the incident involves an infectious substance, you may notify the Director, Center for Disease Control and Prevention (CDC), U.S. Public Health Service, Atlanta, Georgia, toll-free at 800–232–0124. If a discrepancy of a shipment intended for air is discovered following its acceptance aboard aircraft, notify the nearest Federal Aviation Administration Civil Aviation Security Office as soon as practical.

How Long Do I Have To Submit the Written Report?

You must submit your written report within 30 days of discovery of the incident, § 171.16(a).

Am I Required To Update the Information in the Report?

Yes. You must use DOT Form F 5800.1 and check the ''A supplemental (follow-up) report'' box on question #2 to provide additional information after the initial report. You are required to provide updates for up to one year after the initial filing if more information is gained or new developments arise concerning the following, for example:

- A death results from injuries caused by a hazardous material;
- The person responsible for preparing the original report learns that there is a misidentification of hazardous material or package information;
- Damage or loss or related costs that were not known at the time the report was filed become known; or
- Revised estimates of damages, losses, and related costs result in a change of $25,000 or more, or 10% of the original cost estimates, whichever is greater, even if the original estimate was under $500.

How and Where Do I Submit My Completed Report?

• You can mail paper copies of the report to the Information Systems Manager, U.S. Department of Transportation, Research and Special Programs Administration, Office of Hazardous Materials Safety, DHM–63, Washington, DC 20590–0001; or

• You can submit the report on-line at *http://hazmat.dot.gov.*

How Long Must I Keep a Copy of the Report?

You must keep a copy of each report or an electronic image of the report for two years after the date you submit it to RSPA (§ 171.16(b)(3)).

Where Must I Keep a Copy of the Report?

The report must be accessible through your company's principal place(s) of business. You must be able to make the report available upon request to authorized representatives or a special agent of the Department within 24 hours of such a request (§ 171.16(b)(3)).

How Can I Get a Blank Copy of the Form F 5800.1?

There are a variety of sources for obtaining the Form F 5800.1. Please note that you are allowed to make unlimited photocopies of the form and distribute them.

• You may obtain limited copies of the form from the Information Systems Manager at the above address.

• You may download a copy of the form from our website at *http://hazmat.dot.gov/spills.htm*

• Our Fax on Demand service has copies of the instructions and the form. Call 1–800–467–4922 and choose the Fax on Demand option #2.

How Long Does It Take To Complete the Report?

RSPA anticipates that it will take you approximately 1.6 hours to complete this report. This estimate includes the time it will take you to review the instructions, search your existing data sources for information, gather the required data, and complete and review the report.

How Can I Comment on the Length of Time Needed To Complete the Report or on the Amount of Information Required in the Report?

You can send your comments on the report, and any suggestions you have for reducing the amount of time needed to complete the report, to the following address:

(2) Information Systems Manager, U.S. Department of Transportation, Research and Special Programs Administration, Office of Hazardous Materials Safety, DHM–63, Washington, DC 20590–0001.

Please verify that your information is accurate. Although the required information is generally available at the time of the incident, you may need to do some additional investigation in order to obtain all of the facts pertaining to deaths, injuries or damage amounts. If you submit complete and accurate information at the time you file the report, it will decrease the chance of your having to supply missing information to DOT at a later date. RSPA may follow up on incomplete forms.

Instructions for Form DOT F 5800.1:

Please print. Fill in all applicable blanks accurately to the best of your ability.

Part I: Report Type

(3) *This is to report:* Check the box that describes why you are filling out this form. This will normally be ''A) A hazardous material incident.'' If you are reporting an undeclared shipment with no release, check the corresponding box, ''B).'' If you are reporting an incident involving a cargo tank motor vehicle containing a hazardous material that received structural damage to the lading retention system that may affect its ability to retain lading but does not release a hazardous material, check that appropriate box, ''C).''

(2) *Indicate what type of report this is:* If this is an initial report, check the ''initial report'' box. If this is a follow-up to a previous report, check the ''A supplemental (follow-up) report'' box. If you are using additional pages, check the ''Additional Pages'' box.

Part II: General Incident Information

(3), (4) *Date & Time of Incident:* Enter the date and time the incident occurred. If you do not know the actual date and time, give the date and time you discovered the incident. Use 24-hour time for the incident time (*e.g.* ''2400'' for midnight, ''1200'' for noon, ''0747'' for 7:47 a.m., ''2115'' for 9:15 p.m.).

(5) *Enter National Response Center Report Number:* If this incident was reported to the National Response Center (NRC), fill in the report number NRC assigned to the incident.

(6) *If you submitted a report to another Federal DOT agency, enter the agency and report number:* If you were required to fill out a report for another Federal DOT agency such as the Federal Railroad Administration or the Federal Motor Carrier Safety Administration for this incident, please include the agency and report number. This will facilitate our combination of information.

(7) *Location of Incident:* Enter the geographic location of the incident (city, county, State, and zip code). If you do not know the actual location where the incident occurred, give the location where it was discovered. If the incident occurred at an airport or rail yard, include the name of the facility. If the incident occurred on a body of water, include the name and/or river mile. If you do not know the street address, or if the incident occurred on a highway, include a description such as ''On I–70, mile marker 240.''

(8) *Mode of Transportation:* Enter the code that corresponds to the mode of transportation in which the incident occurred or was discovered. If the incident occurred or was discovered in an in-transit storage area (*e.g.*, a terminal or warehouse), check the box that corresponds to the mode by which the package was last transported.

(9) *Transportation Phase:* Enter the code that describes where the incident occurred in the transportation system. In transit means the incident occurred or was first discovered while the package was in the process of being transported. In-transit storage is storage incidental to transportation, such as at a terminal waiting for the next leg of transportation.

(10) *Carrier/Reporter:* Provide the name, street address, Federal DOT number (if applicable), and hazmat registration number of the carrier or the entity who is reporting the incident (if other than a carrier). The entity in physical possession of the material when the incident occurred or was discovered must report the incident.

(11) *Shipper/Offeror:* Enter the information about the person or entity that originally offered for transportation the material or package involved in the incident.

(12) *Origin:* Enter the origin of the shipment if the address is different than the shipper/offeror information entered in item #11.

(13) *Destination:* Enter the final destination of the shipment involved in the incident.

(14) through (19):

Hazardous Material Description: Enter the proper shipping name, technical or trade name, hazard class or division, ID number, packing group, and amount of material released. All of this information, except the amount of material released, can be found on the shipping papers that accompany the shipment, § 172.202. When indicating the amount of material released, include units of measurements (examples: 115 gallons, 69 tons).

(20) Was the material shipped as a hazardous waste? Check the ''Yes'' box if the material meets the definition of a hazardous waste in § 171.8 (requires an EPA Uniform Hazardous Waste Manifest). Include the EPA Manifest number.

(21) Is this a Toxic by Inhalation (TIH) material? If the material involved in the incident meets the definition of a Toxic by Inhalation material in § 173.132, check the ''Yes'' box and enter the Hazard Zone in the space provided.

(22) Was the material shipped under an Exemption, Approval, or Competent Authority Certificate? If the shipment was shipped under an exemption, an approval, or a Competent Authority Certificate, check the ''Yes'' box and provide the appropriate assigned number.

(23) Was this an undeclared hazardous materials shipment? If this material was not indicated in any way to be a hazardous material even though it was required to be described as such on a shipping paper, or if the material would normally be excepted from the shipping paper requirements (such as a small quantity material) and does not have the required markings, it is considered an undeclared hazardous material shipment. Check the appropriate box.

Part III: Packaging Information

(24) *Packaging Type:* Check the box that corresponds to the type of packaging involved in the incident. If more than one packaging type was involved in an incident, reproduce Part III of the form and fill out this section for each of the packaging types. For example, if three different packaging types were involved in an incident, fill out a separate Part III for each packaging type. If the type of packaging is not represented, check the ''Other'' box and enter a brief

description such as ''non-specification bulk bin.''

(25) Enter the appropriate failure codes (found at the end of the instructions): Enter the codes that describe what failed on the packaging, how the packaging failed, and the cause(s) of the failure. Be sure to enter the codes from the list that corresponds to the particular packaging types checked above (#24). Enter the most important failure point in line 1. If there is a second failure point, enter in line 2. If there are more than two failure points, provide additional information in this format in Part VI. The following explains the content of each line: What Failed: You can enter up to 2 ''What Failed'' codes to describe the part of the packaging that fails and was the immediate cause of the release. Often, on a simple packaging, only one code will be required. On more complex packaging, additional entries will help identify where that failure occurred. The first entry should designate the specific point of failure, followed by entries that help identify where that failure occurred. For instance, a deteriorated gasket on a pipe flange on the liquid line would have failure code 121 for gasket entered first and failure code 118 for flange entered second.

How Failed: Enter the ''Failure'' code that describes how the corresponding part of the packaging failed. The primary way the packaging failed should be entered first. Cause(s) of Failure: Enter the ''Cause of Failure'' code that describes what caused the corresponding part of the packaging to fail in the way it did. The most probable or fundamental cause of failure should be entered first.

If none of the codes on the list fit exactly, use the closest matches and provide additional detail in Part VI. Also, if you believe a better set of codes would be more descriptive of what failed, how it failed, and the causes of failure, suggest them in Part VII.

(26a) *Provide the complete packaging identification markings, if available:* Every specification packaging, UN or DOT, has a packaging identification printed or stamped on it or on a plate attached to the packaging. Examples are provided on the form.

(26b) *For Non-bulk, IBC, or non-specification packaging:* Only fill out 26b if the marking is incomplete, destroyed, or unknown. Fill in the Outer and Inner packaging type and material of construction information, as appropriate. If the packaging is Non-bulk or Intermediate Bulk Container (IBC), use the codes below to enter the number or letter that applies for either Non-bulk or IBC packaging. For non-bulk, IBC or non-specification packaging provide a description of the packaging in the space(s) provided.

NON-BULK PACKAGING IDENTIFICATION CODES

Outer Packaging		
Type	Material	Head type
1 = Drum 2 = Wooden Barrel 3 = Jerrican 4 = Box 5 = Bag 6 = Composite Packaging 7 = Pressure receptacle	A = Steel B = Aluminum C = Natural Wood D = Plywood F = Reconstituted Wood G = Fiberboard H = Plastic L = Textile M = Paper, multi-wall N = Metal other than steel or aluminum P = Glass, porcelain, or stoneware	1 = Non-removable 2 = Removable

Inner Packaging	
Type	Material
1 = Bottle 2 = Can 3 = Box 4 = Bag 5 = Cylinder	A = Metal (any type) B = Glass, porcelain, or stoneware C = Plastic D = Fiberboard or cardboard E = Wood (any type)

IBC Packaging Identification Codes

Material of Construction

1—Metal
2—Plastic
3—Composite
4—Fiberboard
5—Wooden
6—Flexible

(27) *Describe the package capacity and the quantity:* Enter the total capacity of the inner and outer package. Also enter the actual amount of hazardous material that was shipped in the package, the number of packages in the shipment, and the number of packages that failed. Please include the units of measurement (liter, gallons, pounds, cubic feet, etc.)

(28) Provide package construction and test information, as appropriate: In the case of Non-bulk packagings or IBCs enter the name of the packaging manufacturer or the symbol of the manufacturer only if complete identification markings were not provided in #26b. Enter the date of manufacture and the serial number, if applicable. Enter the last test date if the packaging requires periodic testing. Also include the design pressure, shell thickness, head thickness, and service pressure if the failed packagings are of the type indicated in parenthesis after each question. If the packaging contained a valve, or other device that failed and resulted in a hazardous material release, enter the valve or device type, manufacturer, and model number.

(29) If the package is for Radioactive Materials, complete the following: Complete this question only if a radioactive material was involved. Indicate the packaging category, the packaging certification, certification number, and which nuclides were present, the transportation index (TI), activity of the nuclides, and the criticality safety index.

Part IV: Consequences

(30) *Result of Incident:* Check all boxes that describe what occurred during the incident or as a result of the incident. For example, in a situation where a truckload of 55 gallon drums of corrosive liquids overturns resulting in a release that contaminates a nearby wetlands and stream the boxes ''Spillage,'' ''Material Entered Waterway/ Storm Sewer,'' and ''Environmental Damage'' may apply.

(31) *Emergency Response:* Check all boxes that correspond with any emergency response and cleanup crews that participated in resolving the incident. If a fire crew, EMS, or police unit responded to the incident, include the report number.

(32) *Damages:* You are required to provide information on estimated damages if your damages exceed $500.00. This figure includes the cost of the material lost, property damage, vehicle damage, response costs, and clean-up costs. If you do not know

these amounts at the time you complete the report, or the actual costs are revised by more than $25,000, you must submit a follow-up report after you determine the amounts. The following definitions explain each of the costs:

Material Loss: Enter the value of material released and unrecoverable. Base this entry on the amount of material released multiplied by the unit value (*e.g.*, price per gallon or price per pound) as listed on the shipper's invoice. If the invoice is not available, estimate the cost per unit using the shipper's basis.

Carrier Damage: Enter the total value of damage incurred by the carrier. Major components include costs to repair the damaged vehicle and costs resulting from damage to cargo. If the vehicle is declared ''totaled,'' enter the insured value of the vehicle. This entry should not include damage to other property or to vehicles owned by other persons.

Property Damage: Enter the total value of costs resulting from damage to the property of others involved in the incident. These include: repair and replacement costs of other vehicles; repair and replacement costs to buildings and other fixed facilities; and restoration of open land beyond decontamination and cleanup.

Response Cost: Enter the total value of response costs. Response costs are those costs incurred immediately after the incident, and include local emergency response from police and fire departments and emergency response teams, as well as costs incurred by the responsible party. Response costs also include costs to contain the hazardous material released. Remediation/Cleanup Cost: Enter the total value of the cost to cleanup and remediate the site. Cleanup costs are those costs incurred to collect, transport, and ultimately dispose of all material collected during the response phase. Remediation costs are those costs incurred to restore the incident scene to its pre-incident state, and could include excavation, disposal and replacement of contaminated soil, pumping, treatment and re-injection of contaminated groundwater, or absorption and disposal of hazardous material released into surface water.

(33a) Did the hazardous material cause or contribute to a human fatality? If a person was fatally injured by contact with the hazardous material or its vapors or by a fire or explosion that resulted from the hazardous material, check the ''Yes'' box and enter the number of fatalities that resulted directly from the hazardous material.

(33b) Were there human fatalities that did not result from the hazardous material? If the fatalities were not caused directly by the hazardous material, check the ''Yes'' box and enter the number of fatalities. An example: if a passenger car collided with a cargo tank carrying gasoline and the automobile driver was killed due to the collision, then the fatality was not caused by the hazardous material released. If, however, the accident resulted in the release of gasoline from the cargo tank and a resulting fire killed the automobile driver, then the fatality was caused by the hazardous material.

(34) Did the hazardous material cause or contribute to a personal injury? If a person was injured by contact with the hazardous material or its vapors or by a fire or explosion that resulted from the hazardous material, check the ''Yes'' box and enter the number of persons injured by the hazardous material.

Hospitalized means admitted to a medical facility, not treated and released from a facility, such as a hospital emergency room, where the person was never admitted to the hospital proper. Non-hospitalized individuals are those who may have received attention from medical personnel on-site or at a facility (including hospital emergency room), but were not admitted to a medical facility. Indicate the number of injured employees, emergency responders (firefighters, police, medics, etc.) and members of the general public.

(35) Did the hazardous material cause or contribute to an evacuation? If the incident required the evacuation or removal of persons from a specific area because of possible or actual contact with the hazardous materials involved in the incident, check the ''Yes'' box. Separately specify the numbers of individuals from the general public evacuated and number of employees of the facility or workers in the area that were evacuated. Also provide the total number of individuals evacuated. Indicate the duration of the evacuation (in hours).

(36) Was a transportation artery or facility closed? If a road or transportation facility was closed due to the incident, check the ''Yes'' box and indicate the duration (in hours) here.

(37) Was the material involved in a crash or derailment? Check the ''Yes'' box if a hazardous material was involved in a crash or derailment. Provide the estimated speed and weather conditions at the time of the crash, such as rain, blowing snow, sleet, iced roadway, sun glare, fog, dry pavement, high winds, etc. Indicate if the vehicle overturned or left the roadway or track.

Part V: Air Incident Information

This section is for incidents with packagings transported or intended for transportation by aircraft. If your packaging was not transported or intended to be transported by air, skip this section.

(38) Was the shipment on a passenger aircraft? Indicate whether the shipment in question was on a commercial passenger aircraft. If so, indicate if the material was tendered (accepted for shipment) as cargo, or was located in a passenger's baggage, either in the cabin or baggage compartment.

(39) Where did the incident occur or where was the incident discovered? Indicate where in the course of transportation the incident occurred or was discovered.

(40) What phase(s) had the shipment already undergone prior to the incident? Check all boxes that describe the transportation phases the shipment went through before the incident occurred or was discovered.

Part VI: Description of Events and Packaging Failure

Please describe the events involved in the incident to provide us with a better understanding of the incident. Include information that has not been collected elsewhere on this form, and include special scenarios, outstanding circumstances, or other information that provides a complete picture of the incident. Describe the sequence of events that led to the incident, the package failure (if any) and actions taken at the time of discovery. Submit photographs and diagrams when necessary for clarification. You may continue on additional sheets if necessary.

Part VII: Recommendations/Actions Taken To Prevent Future Incidents

Recommendations may be preliminary in nature, may suggest actions by other parties, and may be subject to further investigation, refinement, acceptance, or rejection. Often, it may be beyond the ability of the preparer to offer recommendations, but where such recommendations can be made they have the potential of resulting in important improvements with safety benefits. For instance, such information can help companies identify common problems and alert the DOT to the need for additional measures such as outreach or broad training needs. This information can also help support regulatory changes.

Part VIII: Contact Information

Provide the name, title, telephone number, fax number, business name and address, hazmat registration number and email address of the contact person at your company who can answer questions about the information provided on this form. Make sure to check the box that describes the function of your firm: carrier, shipper, facility owner/operator, or other. If ''Other'' is checked, describe the function.

COMPLETE LISTING—ALL PACKAGING TYPES

Code	What failed	Code	How failed	Code	Cause(s) of failure
101	Air Inlet	301	Abraded	501	Abrasion
102	Auxiliary Valve	302	Bent	502	Broken Component or Device
103	Basic Material	303	Burst or Ruptured	503	Commodity Self-ignition
104	Body	304	Cracked	504	Commodity Polymerization
105	Bolts or Nuts	305	Crushed	505	Conveyer or Material Handling Equipment Mishap
106	Bottom Outlet Valve	306	Failed to Operate	506	Corrosion—Exterior

COMPLETE LISTING—ALL PACKAGING TYPES—Continued

Code	What failed	Code	How failed	Code	Cause(s) of failure
107	Check Valve	307	Gouged or Cut	507	Corrosion—Interior
108	Chime	308	Leaked	508	Defective Component or Device
109	Closure (*e.g.*, Cap, Top, or Plug)	309	Punctured	509	Derailment
110	Cover	310	Ripped or Torn	510	Deterioration or Aging
111	Cylinder Neck or Shoulder	311	Structural	511	Dropped
112	Cylinder Sidewall—Near Base	312	Torn Off or Damaged	512	Fire, Temperature, or Heat
113	Cylinder Sidewall—Other	313	Vented	513	Forklift Accident
114	Cylinder Valve	.....	.....	514	Freezing
115	Discharge Valve or Coupling	.....	.....	515	Human Error
116	Excess Flow Valve	.....	.....	516	Impact with Sharp or Protruding Object (*e.g.*, nails)
117	Fill Hole	.....	.....	517	Improper Preparation for Transportation
118	Flange	.....	.....	518	Inadequate Accident Damage Protection
119	Frangible Disc	.....	.....	519	Inadequate Blocking and Bracing
120	Fusible Pressure Relief Device or Element.	.....	.....	520	Inadequate Maintenance
121	Gasket	.....	.....	521	Inadequate Preparation for Transportation
122	Gauging Device	.....	.....	522	Inadequate Procedures
123	Heater Coil	.....	.....	523	Inadequate Training
124	High Level Sensor	.....	.....	524	Incompatible Product
125	Hose	.....	.....	525	Incorrectly Sized Component or Device
126	Hose Adaptor or Coupling	.....	.....	526	Loose Closure, Component, or Device
127	Inlet (Loading) Valve	.....	.....	527	Misaligned Material, Component, or Device
128	Inner Packaging	.....	.....	528	Missing Component or Device
129	Inner Receptacle	.....	.....	529	Overfilled
130	Lifting Feature	.....	.....	530	Over-pressurized
131	Lifting Lug	.....	.....	531	Rollover Accident
132	Liner	.....	.....	532	Stub Sill Separation from Tank (Tank Cars)
133	Liquid Line	.....	.....	533	Threads Worn or Cross Threaded
134	Liquid Valve	.....	.....	534	Too Much Weight on Package
135	Loading or Unloading Lines	.....	.....	535	Valve Open
136	Locking Bar	.....	.....	536	Vandalism
137	Manway or Dome Cover	.....	.....	537	Vehicular Crash or Accident Damage
138	Mounting Studs	.....	.....	538	Water Damage
139	O-Ring or Seals.				
140	Outer Frame.				
141	Piping or Fittings.				
142	Piping Shear Section.				
143	Pressure Relief Valve or Device—Non-Reclosing.				
144	Pressure Relief Valve or Device—Reclosing.				
145	Remote Control Device.				
146	Sample Line.				
147	Stub Sill (Tank Car).				
148	Sump.				
149	Tank Head.				
150	Tank Shell.				
151	Thermometer Well.				
152	Threaded Connection.				
153	Vacuum Relief Valve.				
154	Valve Body.				
155	Valve Seat.				
156	Valve Spring.				
157	Valve Stem.				
158	Vapor Valve.				
159	Vent.				
160	Washout.				
161	Weld or Seam.				

General non-bulk and IBCs		Cylinders	
Code	What failed	Code	What failed
103	Basic Material	111	Cylinder Neck or Shoulder
104	Body	112	Cylinder Sidewall—Near Base

General non-bulk and IBCs	
Code	What failed
105	Bolts or Nuts
108	Chime
109	Closure (*e.g.*, Cap, Top, or Plug)
110	Cover
119	Frangible Disc
120	Fusible Pressure Relief Device or Element
121	Gasket
125	Hose
128	Inner Packaging
129	Inner Receptacle
130	Lifting Feature
132	Liner
140	Outer Frame
143	Pressure Relief Valve or Device—Non-Reclosing
144	Pressure Relief Valve or Device—Reclosing
161	Weld or Seam

Code	How Failed
301	Abraded
302	Bent
303	Burst or Ruptured
304	Cracked
305	Crushed
306	Failed to Operate
307	Gouged or Cut
308	Leaked
309	Punctured
310	Ripped or Torn
311	Structural
312	Torn Off or Damaged
313	Vented

Code	Cause(s) of Failure
501	Abrasion
503	Commodity Self-ignition
504	Commodity Polymerization
505	Conveyer or Material Handling Equipment Mishap
506	Corrosion—Exterior
507	Corrosion—Interior
508	Defective Component or Device
510	Deterioration or Aging
511	Dropped
513	Forklift Accident
514	Freezing
515	Human Error
516	Impact with Sharp or Protruding Object (*e.g.*, nails)
517	Improper Preparation for Transportation
521	Inadequate Preparation for Transportation
522	Inadequate Procedures
523	Inadequate Training
529	Overfilled
530	Overpressurized
534	Too Much Weight on Package
535	Valve Open
536	Vandalism
537	Vehicular Crash or Accident Damage
538	Water Damage

Cylinders	
Code	What failed
113	Cylinder Sidewall—Other
114	Cylinder Valve
119	Frangible Disc
120	Fusible Pressure Relief Device or Element
122	Gauging Device
132	Liner
143	Pressure Relief Valve or Device—Non-Reclosing
144	Pressure Relief Valve or Device—Reclosing
161	Weld or Seam

Code	How Failed
301	Abraded
303	Burst or Ruptured
304	Cracked
306	Failed to Operate
307	Gouged or Cut
308	Leaked
309	Punctured
313	Vented

Code	Causes of Failure
501	Abrasion
502	Broken Component or Device
503	Commodity Self-ignition
504	Commodity Polymerization
505	Conveyer or Material Handling Equipment Mishap
506	Corrosion—Exterior
507	Corrosion—Interior
508	Defective Component or Device
510	Deterioration or Aging
512	Fire, Temperature, or Heat
513	Forklift Accident
514	Freezing
515	Human Error
516	Impact with Sharp or Protruding Object (*e.g.*, nails)
517	Improper Preparation for Transportation
519	Inadequate Blocking and Bracing
520	Inadequate Maintenance
521	Inadequate Preparation for Transportation
522	Inadequate Procedures
523	Inadequate Training
524	Incompatible Product
525	Incorrectly Sized Component or Device
526	Loose Closure, Component, or Device
527	Misaligned Material, Component, or Device
528	Missing Component or Device
529	Overfilled
530	Over-pressurized
535	Valve Open
536	Vandalism
537	Vehicular Crash or Accident Damage

Portable tanks	
Code	What failed
105	Bolts or Nuts
106	Bottom Outlet Valve
107	Check Valve
108	Chime
109	Closure (*e.g.*, Cap, Top, or Plug)

Bulk tank vehicles—cargo tank motor vehicles (CTMV) and tank cars	
Code	What failed
101	Air Inlet
105	Bolts or Nuts
106	Bottom Outlet Valve
107	Check Valve
110	Cover

Portable tanks	
Code	What failed
110	Cover
119	Frangible Disc
120	Fusible Pressure Relief Device or Element
121	Gasket
122	Gauging Device
125	Hose
127	Inlet (Loading) Valve
131	Lifting Lug
132	Liner
135	Loading or Unloading Lines
137	Manway or Dome Cover
140	Outer Frame
141	Piping or Fittings
143	Pressure Relief Valve or Device—Non-Reclosing
144	Pressure Relief Valve or Device—Reclosing
152	Threaded Connection
153	Vacuum Relief Valve
161	Weld or Seam
Code	How Failed
301	Abraded
302	Bent
303	Burst or Ruptured
304	Cracked
305	Crushed
306	Failed to Operate
307	Gouged or Cut
308	Leaked
309	Punctured
310	Ripped or Torn
312	Torn Off or Damaged
313	Vented
Code	Cause(s) of Failure
501	Abrasion
502	Broken Component or Device
503	Commodity Self-ignition
504	Commodity Polymerization
505	Conveyer or Material Handling Equipment Mishap
506	Corrosion—Exterior
507	Corrosion—Interior
508	Defective Component or Device
509	Derailment
510	Deterioration or Aging
511	Dropped
512	Fire, Temperature, or Heat
514	Freezing
515	Human Error
517	Improper Preparation for Transportation
520	Inadequate Maintenance
521	Inadequate Preparation for Transportation
522	Inadequate Procedures
523	Inadequate Training
524	Incompatible Product
525	Incorrectly Sized Component or Device
526	Loose Closure, Component, or Device
527	Misaligned Material, Component, or Device
528	Missing Component or Device
529	Overfilled
530	Overpressurized
531	Rollover Accident
536	Vandalism
537	Vehicular Crash or Accident Damage

Bulk tank vehicles—cargo tank motor vehicles (CTMV) and tank cars	
Code	What failed
115	Discharge Valve or Coupling
116	Excess Flow Valve
117	Fill Hole
118	Flange
119	Frangible Disc
120	Fusible Pressure Relief Device or Element
121	Gasket
122	Gauging Device
123	Heater Coil
124	High Level Sensor
125	Hose
126	Hose Adaptor or Coupling
127	Inlet (Loading) Valve
131	Lifting Lug
132	Liner
133	Liquid Line
134	Liquid Valve
135	Loading or Unloading Lines
136	Locking Bar
137	Manway or Dome Cover
138	Mounting Studs
139	O-Ring or Seals
141	Piping or Fittings
142	Piping Shear Section
143	Pressure Relief Valve or Device—Non-Reclosing
144	Pressure Relief Valve or Device—Reclosing
145	Remote Control Device
146	Sample Line
147	Stub Sill (Tank Car)
148	Sump
149	Tank Head
150	Tank Shell
151	Thermometer Well
152	Threaded Connection
153	Vacuum Relief Valve
154	Valve Body
155	Valve Seat
156	Valve Spring
157	Valve Stem
158	Vapor Valve
159	Vent
160	Washout
161	Weld or Seam
Code	How Failed
301	Abraded
302	Bent
303	Burst or Ruptured
304	Cracked
305	Crushed
306	Failed to Operate
307	Gouged or Cut
308	Leaked
309	Punctured
310	Ripped or Torn
311	Structural
312	Torn Off or Damaged
313	Vented
Code	Cause(s) of Failure
501	Abrasion
502	Broken Component or Device
503	Commodity Self-ignition
504	Commodity Polymerization
505	Conveyer or Material Handling Equipment Mishap
506	Corrosion—Exterior
507	Corrosion—Interior
508	Defective Component or Device
509	Derailment
510	Deterioration or Aging
511	Dropped
512	Fire, Temperature, or Heat

Portable tanks		Bulk tank vehicles—cargo tank motor vehicles (CTMV) and tank cars	
Code	What failed	Code	What failed
		515	Human Error
		517	Improper Preparation for Transportation
		518	Inadequate Accident Damage Protection
		519	Inadequate Blocking and Bracing
		520	Inadequate Maintenance
		521	Inadequate Preparation for Transportation
		522	Inadequate Procedures
		523	Inadequate Training
		524	Incompatible Product
		525	Incorrectly Sized Component or Device
		526	Loose Closure, Component, or Device
		527	Misaligned Material, Component, or Device
		528	Missing Component or Device
		529	Overfilled
		530	Overpressurized
		531	Rollover Accident
		532	Stub Sill Separation from Tank (Tank Cars)
		533	Threads Worn or Cross Threaded
		536	Vandalism
		537	Vehicular Crash or Accident Damage

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Federal Register

Wednesday,
December 3, 2003

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 732
Revisions to the State Program Amendment Process; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 732

RIN 1029–AC06

Revisions to the State Program Amendment Process

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), propose to revise our regulations governing the processing of State program amendments submitted by a State for approval under the Surface Mining Control and Reclamation Act of 1977. When a State with an approved program fails to amend its program as directed, our existing regulations require us to begin proceedings to either enforce that part of the State program that should have been amended, or withdraw approval in whole or in part and implement a Federal program. This rule would provide us with the discretion to consider the entire performance of the State in effectively implementing its program before determining that proceedings leading to Federal enforcement are warranted.

DATES: *Written comments:* We will accept written comments on the proposed rule until 5 p.m., Eastern Time, on February 2, 2004.

Public hearings: Upon request, we will hold a public hearing on the proposed rule at a date, time, and location to be announced in the **Federal Register** before the hearing. We will accept requests for a public hearing until 5 p.m., Eastern Time, on December 24, 2003.

ADDRESSES: If you wish to comment, you may submit your comments on this proposed rule by any one of three methods. You may mail or hand carry comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue NW., Washington, DC 20240. You may also submit your comment via the Internet to OSM's Administrative Record at: *osmrules@osmre.gov.*

You may submit a request for a public hearing orally or in writing to the person specified under **FOR FURTHER INFORMATION CONTACT**. We will announce the address, date, and time for any public hearing before the hearing. Any disabled individual who requires special accommodation to attend a public hearing should also contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Andy DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., MS–210–SIB, Washington, DC 20240; Telephone: (202) 208–2701. E-mail: *adevito@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Why Are We Revising Our Regulations?

We propose to revise our regulations governing the processing of State program amendments submitted by a State for approval under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) in order to provide OSM with more discretion in resolving issues affecting approved State programs and the State program amendment process.

What Is an Approved State Program?

In SMCRA, section 503 of Title V grants each State in which there are or may be surface coal mining operations conducted on non-Federal lands the right to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations. To do so, the State must submit to the Secretary of the Interior for approval, a State program that demonstrates that the State has the capability of carrying out the provisions of SMCRA. Since its enactment in 1977, 24 States have chosen to exercise such responsibility and have programs approved by us. The implementing regulations at 30 CFR part 732 provide the criteria and procedures for decisions to approve or disapprove submissions of State programs.

What Is a State Program Amendment?

Although not expressly provided for in SMCRA, OSM also, by regulation at 30 CFR 732.17, provides criteria and processes for amending State programs in anticipation of a need to modify or update them as conditions or national rules change. Occasionally, for various reasons such as legislative changes to the provisions of SMCRA or litigation resulting in adverse court decisions, we revise our regulations. As a result, all 24 States with approved programs may be required to amend their approved State programs in order to be ''no less effective'' than the OSM regulatory program. Also, States may decide to amend their programs on their own initiative.

If we determine that a State program amendment is required, we notify the State regulatory authority of the need to amend its approved program. Within 60 days after notification, the State must submit (1) a proposed written amendment, or (2) a description of an amendment to be proposed that meets the requirements of SMCRA and OSM's implementing regulations, and a timetable for enactment that is consistent with established administrative or legislative procedures in the State. If the State regulatory authority does not submit the proposed amendment or a description and timetable within 60 days from the receipt of the notice, or does not subsequently comply with the submitted timetable, or if the amendment is not approved, then pursuant to 30 CFR 732.17(f)(2), the Director of OSM (Director) must begin proceedings under 30 CFR part 733.

What Is a 733 Proceeding?

Under 30 CFR part 733, which is based on sections 504(b)–(d) and 521(b) of SMCRA, if the Director has reason to believe that a State is not effectively implementing, administering, maintaining, or enforcing any part of its approved State program, then the Director must promptly notify the State regulatory authority in writing. The notification must provide sufficient information to allow the State to determine what portions of the program the Director believes are not being effectively implemented, administered, maintained, or enforced; provide the reasons for such belief; and specify the time period for the State to accomplish any necessary remedial actions. If, after certain hearing procedures, the Director finds that (1) the State has failed to implement, administer, maintain, or effectively enforce all or part of its approved State program, and (2) that the State has not demonstrated its capability and intent to administer the State program, then the Director must take one of the following actions. The Director must either (1) initiate direct Federal enforcement of all or part of the State program; or (2) recommend to the Secretary of the Interior that he or she withdraw approval of the State program, in whole or in part, and establish a Federal program for the State.

What Are the Consequences of a 733 Action?

The substitution of Federal enforcement under 30 CFR 733.12 for all or part of an approved State program results in substantial disruption to the

State, the Federal government, and the coal industry. OSM has initiated a 733 action nine times in its history. We initiated action under part 733 in Oklahoma (1981, 1983, and 1993), Kansas (1983), Tennessee (1983), Montana (1993), Utah (1995), West Virginia (2001), and Missouri (2003). In Montana, Utah, Kansas, West Virginia, and the Oklahoma actions in 1981 and 1993, the issues were resolved without Federal takeover of any part of the State program. In three cases, OSM did take over partial enforcement of a State program—Oklahoma (1984), Tennessee (1984), and Missouri (2003). In Oklahoma, the State took action to address the deficiencies, and full authority was later returned to the State. In Tennessee, the State chose instead to terminate its approved program and repealed the Tennessee Coal Surface Mining Act and its implementing regulations. OSM promulgated a Federal program for that State in 1984. After implementing the Federal program, we were required under section 504(d) of SMCRA to review all the permits issued by the State of Tennessee under the standards of the new Federal program. The substitution of Federal enforcement in Tennessee resulted in delays in processing and issuing new coal permits in the State. While the Tennessee situation was an extreme example, disruption always occurs when there is a substitution of Federal enforcement for all or part of an approved State program.

The most recent 733 action in Missouri is still unresolved. On July 21, 2003, the Governor of Missouri notified us that the State of Missouri is experiencing difficult budget and revenue shortfalls. As a result of the situation, the Governor requested assistance with permit reviews, inspection activities, and general oversight of the active coal mining operations in the State. The Governor indicated that he was hopeful his request would be temporary and that he would continue to work with the legislature in an attempt to assure adequate funding for all responsibilities.

On August 4, 2003, we notified the Governor that we were obligated, in accordance with 30 CFR 733.12(e), to substitute Federal enforcement for those portions of the Missouri program that were not fully funded and staffed. We cited problems with the State's implementation of the Missouri program in several areas including inspection, enforcement, permitting, and bonding activities. As a result of substituting Federal enforcement, we became responsible for, among other things, approximately 40 permitting actions, 24 inspectable units, and an unsuitability petition filed on October 20, 2003. For more details on the Missouri 733 action, *see* 68 FR 50944, August 22, 2003.

Why Are We Revising Our Regulations?

As previously mentioned, our regulations at 30 CFR 732.17(f)(2) require us to begin proceedings against a State under 30 CFR part 733 when the State fails to submit and obtain approval of a required program amendment within the time allowed. While there may be circumstances in which the substance of a required State program amendment is such that the State's failure or inability to submit it to OSM and obtain approval warrants action under part 733, in most instances this is not the case. There are far more amendments being processed than originally anticipated when the State program provisions were enacted in 1977, and they typically involve a single issue and/or pertain to minor program revisions. Usually, the substance of the required State program amendment is such that the State's failure or inability to submit it to OSM and obtain approval does not jeopardize the overall effectiveness of the approved State program.

For example, in 1999, we required the State of Iowa to submit certain program amendments pertaining to revegetation success standards by May 25, 2000. *See* 64 FR 66385; November 26, 1999. The State submitted the required amendment on August 17, 2001—fifteen months after it was due—and we approved it on December 27, 2001. *See* 66 FR 66743; December 27, 2001. The delay in submitting the program amendment did not jeopardize the overall effectiveness of the approved State program and it did not result in harm to the environment. Iowa had not produced a single ton of coal during the three years prior to receiving our notice of the required amendment. Nevertheless, even in such situations, our existing regulations automatically require us to begin proceedings under part 733—proceedings that are costly and disruptive to both OSM and the affected State, and sometimes completely unnecessary. Because of limited staff and resources, and due to the need to direct our efforts to higher priorities, Iowa was able to complete the amendment process before we could initiate proceedings under part 733.

What Revisions Are We Making?

This proposed rule would provide discretion to the Director by allowing consideration of the State's overall effectiveness in implementing, administering, maintaining, or enforcing its approved program before determining that proceedings under part 733 are warranted because of a delinquent State program amendment. This is the standard currently found in 30 CFR 733.12(b) which applies in most situations. However, the provisions in 30 CFR 732.17(f)(2) by-pass those in 30 CFR 733.12(b) by automatically assuming that the failure to submit or obtain approval of a State program amendment is an indication that the State is *not* effectively implementing, administering, maintaining, or enforcing its approved program. A State's failure to submit an amendment and obtain approval by OSM may be the result of other factors such as the failure of the State legislature to enact required legislation, reluctance to submit an amendment ''no less effective'' than an OSM regulation that is currently being litigated, or timely submission of an amendment that the State thought was ''no less effective'' than the Secretary's regulations, but OSM found to be deficient.

We believe that, in situations where the State has not submitted and obtained approval of a required amendment, a less disruptive and more effective way to obtain the required amendment is to work with the State at the staff level to discuss problems and resolve issues rather than automatically begin formal proceedings under part 733. To automatically begin proceedings under part 733, as currently required by 30 CFR 732.17(f)(2), damages the working relationship we have with a State that has voluntarily agreed to work in partnership with OSM to implement and administer the provisions of Title V of SMCRA. For these reasons, we are proposing the following revisions.

30 CFR 732.17(f)(2)

Under the existing regulation in 30 CFR 732.17(f)(2), the Director is required to begin proceedings to either enforce that part of the State program affected or withdraw approval, in whole or in part, and implement a Federal program under the following situations. The Director is required to begin proceedings if the State regulatory authority does not (1) submit a proposed amendment or a description of an amendment and the timetable for enactment within 60 days from the receipt of the notice from OSM, or (2) does not subsequently comply with the submitted timetable, or if the amendment is not approved by OSM.

We propose to revise this requirement by inserting the words ''if the Director finds that such action is warranted because the State is not effectively implementing, administering,

maintaining or enforcing its approved State program.'' This language is taken in part from 30 CFR 733.12(b) and will provide the discretion necessary to consider the State's overall performance rather than automatically require proceedings under part 733. Our regulations at 30 CFR 733.12(e) provide the standards for substitution of Federal enforcement. The standards are a determination by the Director that: (1) The State has failed to effectively implement, administer, maintain or enforce all or part of its approved State program; and (2) the State has not demonstrated its capability and intent to administer its approved State program.

30 CFR 732.17(h)(1)

Paragraph (h)(1) currently requires that we publish in the **Federal Register** a notice of receipt of a State program amendment within 10 days after receiving it from the State. We propose increasing the time period from 10 days to 30 days because we have found it difficult to meet the 10-day time period. When the regulations were originally written, State program amendments were received and processed at OSM's headquarters office in Washington, DC. The approval of State program amendments has since been decentralized and receipt and approval now takes place in our three regional offices. They in turn transmit the amendments to the OSM headquarters office in Washington, DC for final clearance. After they are cleared for publication, they are sent to the Office of the Federal Register which usually publishes them on the third day after receipt. This can no longer be done in 10 days and so we propose increasing the time from 10 to 30 days.

30 CFR 732.17(h)(2)(v)

Paragraph (h)(2)(v) currently requires that we publish a schedule for review and action on a State program amendment. Experience has shown that schedules usually change because of extensions of the comment period and delays in obtaining comments from other government agencies. Because these schedules are variable and unreliable, we propose removing the requirement that we publish a schedule for review and action on a State program amendment.

30 CFR 732.17(h)(8)

Paragraph (h)(8) currently allows the State regulatory authority 30 days to resubmit a revised amendment for consideration if its original submission is not approved. Experience has shown that the 30 days is insufficient for the State to accomplish the submission. We propose to increase the time frame from 30 days to either 60 days or a time frame consistent with the established administrative or legislative procedures in the State, whichever is later. This will provide the State with a more realistic time frame within which to act.

30 CFR 732.17(h)(9)

Paragraph (h)(9) would be shortened and simplified by cross referencing the processing provisions in paragraph (h) rather than specifying the same procedures in paragraph (h)(9).

30 CFR 732.17(h)(12)

Paragraph (h)(12) currently requires that within 10 days after approving or not approving a State program amendment, the decision must be published in the **Federal Register**. We propose increasing the time period from 10 days to 30 days for the same reasons as discussed for the revisions of paragraph (h)(1) above.

30 CFR 732.17(h)(13)

We propose to revise paragraph (h)(13) by deleting the cross reference to the schedule in paragraph (h)(2)(v) because, as previously discussed, we propose to delete that paragraph. We also propose to revise the time frame for our final decision on a State program amendment by increasing the time allowed from six months to seven months to allow for the increase in time from 10 to 30 days to publish documents in the **Federal Register**.

II. How Do I Submit Comments on the Proposed Rule?

Written Comments: If you submit written comments on the proposed rule during the 60-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for any recommended change(s). Where practicable, you should submit three copies of your comments. We will not give consideration to anonymous comments. Although every effort will be made to consider all other comments submitted, OSM cannot assure that comments sent to an address other than those listed above (*see* **ADDRESSES**) will be included in the Administrative Record and available for our review.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address 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, to the extent allowed 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 inspection in their entirety.

Public hearings: We will hold a public hearing on the proposed rule upon request only. The time, date, and address for any hearing will be announced in the **Federal Register** at least 7 days prior to the hearing.

Any person interested in participating in a hearing should inform Andy DeVito (*see* **FOR FURTHER INFORMATION CONTACT**), either orally or in writing by 5 p.m., Eastern time, on December 24, 2003. If no one has contacted Mr. DeVito to express an interest in participating in a hearing by that date, a hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the Administrative Record.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard. To assist the transcriber and ensure an accurate record, we request that, if possible, each person who testifies at a public hearing provide us with a written copy of his or her testimony.

III. What Are the Procedural Matters and Required Determinations for This Proposed Rule?

Executive Order 12866—Regulatory Planning and Review

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

a. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. The revisions to the provisions governing the processing of State program amendments and the time

frames for their publication will not have an adverse economic impact on States. It may in fact reduce administrative expenses for the States by allowing for the informal resolution of issues at staff level rather than requiring a part 733 action.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As previously stated, the revision to the provisions governing the processing of State program amendments and the time frames for their publication will not have an adverse economic impact. Further, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

Small Business Regulatory Enforcement Fairness Act

For the reasons previously stated, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, Tribal, or local governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. The revisions being proposed are procedural in nature and do not affect private property.

Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13132—Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment for the reasons discussed above.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the proposed revisions pertaining to actions under part 733 would not have substantial direct effects 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.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not considered a significant energy action under Executive Order 13211. The revisions to the provisions governing the processing of State program amendments and the time frames for their publication will not have a significant effect on the supply, distribution, or use of energy.

Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act to the Office of Management and Budget is not required.

National Environmental Policy Act

OSM has reviewed this rule and determined that it is categorically excluded from the National Environmental Policy Act process in accordance with the Departmental Manual 516 DM 2, Appendix 1.10.

How Will This Rule Affect State and Indian Programs?

Following publication of a final rule, we will evaluate the State and Indian programs approved under section 503 of SMCRA to determine any changes in those programs that may be necessary. When we determine that a particular State program provision should be amended, the particular State will be notified in accordance with the provisions of 30 CFR 732.17. On the basis of the proposed rule, we have made a preliminary determination that no program revisions will be required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections (a ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 732.17)? (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? (6) What else could we do to make the proposed rule easier to understand? Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

List of Subjects in 30 CFR Part 732

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: November 19, 2003.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

Accordingly, we propose revising 30 CFR part 732 as set forth below.

PART 732—PROCEDURES AND CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAM AMENDMENTS

1. The authority citation for part 732 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et seq.*

2. Section 732.17 is amended by revising paragraphs (f)(2), (h)(1), (h)(8), (h)(9), (h)(12), and (h)(13); and removing paragraph (h)(2)(v) to read as follows:

§ 732.17 State program amendments.

* * * * *

(f) * * *

(2) If the State regulatory authority does not submit the information required by paragraph (f)(1), or does not subsequently comply with the submitted timetable, or if the amendment or submission under paragraph (h)(8) is not approved under this section, then the Director must begin proceedings under 30 CFR part 733 if the Director has reason to believe that such action is warranted because the State is not effectively implementing, administering, maintaining or enforcing its approved State program.

* * * * *

(h) * * *

(1) Within 30 days after receipt of a State program amendment from a State regulatory authority, the Director will publish a notice of receipt of the amendment in the **Federal Register**.

* * * * *

(8) If the Director does not approve the amendment request, the State regulatory authority will have 60 days after publication of the Director's decision or a time frame consistent with the established administrative or legislative procedures in the State, whichever is later, to submit a revised amendment request for consideration by the Director. If no submission is made, then the Director must follow the procedures specified in paragraph (f)(2) of this section.

(9) The Director will approve or not approve revised amendment submissions in accordance with the provisions under paragraph (h) of this section.

* * * * *

(12) All decisions approving or not approving program amendments must be published in the **Federal Register** and be effective upon publication unless the notice specifies a different effective date. The decision approving or not approving program amendments will be published in the **Federal Register** within 30 days after the date of the Director's decision.

(13) Final action on all amendment requests must be completed within seven months after receipt of the proposed amendments from the State.

[FR Doc. 03–29756 Filed 12–2–03; 8:45 am]

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Federal Register

Wednesday,
December 3, 2003

Part IV

Department of Education

Privacy Act of 1974; System of Records; Notice

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Office of Intergovernmental and Interagency Affairs, Department of Education.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of an altered system of records entitled ''Presidential Scholars Program Files and PSAonline Application System (18–06–03),'' last published in the **Federal Register** on December 27, 1999 (64 FR 72392–72393). The system contains information about the current and former candidates and finalists in the Presidential Scholars recognition program, including the name, Social Security number, address, phone number, and other biographical information provided by the student, such as SAT/ACT scores, school transcripts, and essays. A new component, the ''PSAonline'' application system, which will be made available to the public in 2004, replicates exactly the content of the existing paper-based application system, but allows applicants and school staff to submit applications electronically through links on the Department's Web site. The paper-based option for submitting applications remains available.

DATES: The Department seeks comments on the altered system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on or before January 2, 2004.

The Department filed a report describing the revisions to the system of records covered by this notice with the Chair of the Committee on Governmental Affairs of the United States Senate, the Chair of the Committee on Government Reform of the United States House of Representatives, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 26, 2003. The changes made in this notice will become effective on the later of— (1) the expiration of the 40-day period for OMB review on January 5, 2004, or (2) January 2, 2004, unless the system of records requires changes as a result of public comment or OMB review. The Department will publish any changes resulting from public comment or OMB review.

ADDRESSES: Address all comments about this altered system of records to Melissa Apostolides, Office of Intergovernmental and Interagency Affairs, 400 Maryland Avenue, SW., room 5E229, Washington, DC 20202–3521. Telephone: 202–205–0512. If you prefer to send your comments through the Internet, use the following address: *comments@ed.gov.*

You must include the term ''U.S. PSP'' in the subject line of the electronic message.

During and after the comment period, you may inspect all public comments about this notice in room 5E229, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Melissa Apostolides. Telephone: (202) 205–0512. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of an altered system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to information about an individual that contains individually identifiable information that is retrieved by a unique identifier associated with each individual, such as a name or Social Security number. The information about each individual is called a ''record'' and the system, whether manual or computer-based, is called a ''system of records.'' The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports for OMB whenever the agency publishes a new system of records or makes a significant change to an established system of records. Each agency is also required to send copies to the Chair of the Senate Committee on Governmental Affairs and the Chair of the House Committee on Government Reform. These reports are intended to permit an evaluation of the probable or potential effect of the proposal on the privacy or other rights of individuals.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498, or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: November 26, 2003.

Laurie M. Rich,

Assistant Secretary for Intergovernmental and Interagency Affairs.

For the reasons discussed in the preamble, the Assistant Secretary for the Office of Intergovernmental and Interagency Affairs of the U.S. Department of Education publishes a notice of an altered system of records to read as follows:

18–06–03

SYSTEM NAME:

Presidential Scholars Program Files and PSAonline Application System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

U.S. Presidential Scholars Program, Community Services, Partnerships and Recognition Programs Team, Office of Intergovernmental and Interagency Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–3521.

American College Testing, Inc., Recognition Program Services, 301 ACT Drive, Iowa City, Iowa 52243–4030.

General Dynamics, Information Technology Service Division, 3040 Williams Drive, Suite 200, Fairfax, Virginia, 22031.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individuals who are participants in the U.S. Presidential Scholars Program (the program).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of information about program candidates, including name, date of birth, Social Security number, address, e-mail address, high school, biographical information provided by the students such as work experience and awards received, SAT and ACT scores, school transcripts, and essays, as well as name and contact information for the teacher the candidate is nominating for the Department's Teacher Recognition Award. The system will also include the unique user identification and password issued to system users by the Department of Education (Department) in its invitation package (application to the program is by invitation only.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11155 (1964), as amended by Executive Order 12158 (1979).

PURPOSE(S):

The information in this system will be used to— (1) Determine the eligibility of candidates and review their applications in order to determine program semifinalists and finalists on an annual basis; (2) develop and implement the program's annual recognition component; and (3) carry out the authorizing Executive Order 11155, as amended by Executive Order 12158 (1979).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. The Department may make disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Computer Matching and Privacy Protection Act of 1988, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, tribal, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulations if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulations, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive order, rule, regulations, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties described in paragraphs (a)(i) through (v) is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed or been requested to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity if the agency has agreed to represent the employee; or

(v) The United States if the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear or to an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, Counsels, Representatives, and Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, local, tribal, or foreign agency maintaining civil, criminal, or other relevant enforcement or other pertinent records or to another public authority or professional organization, if necessary, to obtain information relevant to a decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, tribal, or foreign agency or other public authority or professional organization in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint, or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline, or competence determination proceedings. The disclosure may be made only during the course of the proceeding.

(6) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the DOJ and the OMB if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(7) *Disclosure to the DOJ.* The Department may disclose records to the DOJ to the extent necessary for

obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the program covered by this system.

(8) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(9) *Congressional Member Disclosure.* The Department may disclose information to a Member of Congress from the record of an individual in response to an inquiry from the Member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(10) *Routine Programmatic Purposes.* The Department may disclose records from this system of records in order to promote the selection and recognition of students and the visibility of the program. In order to honor participants and finalists (Scholars) pursuant to programmatic requirements, disclosures of records from this system will be made to the following entities for the purposes specified:

(a) *Disclosures to the Review Committee and the Commission on Presidential Scholars.* The program will provide copies of each candidate's complete application package to members of the program's review committee for selection of semifinalists and complete copies of each semifinalist's application package to the Commission on Presidential Scholars (Commission) for selection of the Scholars and for in-state recognition ceremonies held for semifinalists and Scholars.

(b) *Disclosures to the General Public Announcing the Program's Candidates, Semifinalists, and Scholars.* The program will provide the name, State, town, and school name of each candidate, semifinalist, and Scholar on the Presidential Scholars Program section of the Department's Web site.

(c) *Disclosures to the General Public of the Annual Presidential Scholars Yearbook.* For recognition purposes as well as informational and, on rare occasions, research requests, the program will provide copies of the Presidential Scholars Yearbook, which includes student photos, names, school, city, State, college of choice, and student-written essays, to Scholars, families, teachers, Commissioners, sponsors, potential candidates, researchers, and other interested parties. Due to limited numbers, copies are provided first to program participants and, if additional copies remain, in response to other inquiries.

(d) *Disclosures to Contractors for Production of Program Recognition Materials and the Presidential Scholars Yearbook.* The program will provide records to contractors for the printing of certificates, the engraving of Scholar medallions, and the printing of the Presidential Scholars Yearbook. The Executive order states that Scholars are to receive medallions, and occasionally the Administration wishes to provide certificates signed by the President.

(e) *Disclosures to Contractors and College-age Interns to Arrange Scholar Accommodations, Transportation, and Other Services.* The program may provide records to area vendors in preparation for the program's ''National Recognition Week,'' held annually in Washington, DC, each June. During that week, Scholars travel to the Nation's Capital at the program's expense to participate in educational and celebratory activities. At the same time, former Scholars return to the program as ''Advisors'' to assist with the program during National Recognition Week.These Advisors also receive information relevant to the Scholars assigned to them.

(f) *Disclosures to National, State, and Local Media To Publicize the Scholars and Respond to Press Inquiries About Them.* Records are provided to national, State, and local media for the purpose of publicizing the Scholars and responding to press inquiries.

(g) *Disclosures to the White House and Federal Agencies for Briefings, Speechwriting, or To Obtain Security Clearances.* Records are provided to the White House and Federal agencies for the purpose of speechwriting and briefings for officials addressing the Scholars and guests at recognition events or for security clearances at events attended by Government officials or in buildings with limited access.

(h) *Disclosures to National, State, and Locally Elected Officials and Their Staff To Notify Them of Candidates, Semifinalists, and Scholars in their States or Districts and To Assist With Other Activities To Recognize These Individuals.* Records are provided for the purpose of notifying elected officials of candidates, semifinalists, and Scholars in their States or districts and to assist with preparing congratulatory letters, certificates, and other honors or scheduling events or office visits in Washington, DC, or at home.

(i) *Disclosures to State and Local Education Officials To Notify Them of Candidates, Semifinalists, and Scholars in Their States, Districts, or Schools.* Records are provided to Chief State School Officers, Superintendents of school districts, principals, and guidance counselors for the purpose of notifying them of the candidates, semifinalists, and Scholars in their States, districts, or schools.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in hard copy filed in lockable standard filing cabinets; on access-controlled personal computers; and in the Network Operations Center at the General Dynamics host site.

RETRIEVABILITY:

The data are retrieved by name, Social Security number, State, high school, and year of selection. Various reports on multiple candidates, semifinalists, and Scholars can also be run.

SAFEGUARDS:

All physical access to the Department site and the sites of Department contractors where this system of records is maintained is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer systems employed by the Department and its contractors offer a high degree of security against tampering and circumvention. These security systems limit data access to Department and contract personnel on a ''need to know'' basis and control individual users' ability to access and alter records within the system. All users of these systems are given a unique user ID, and interactions by individual users with the system are recorded.

In accordance with the Privacy Act, all candidates or their legal guardians, if they are minors, must read a privacy advisory statement. Candidates or their legal guardians also must provide a signature affirming their candidacy and authorizing the release of specific information in relation to the program. PSAonline will use assigned electronic identifications and passwords for these authorizations. Applicants or their legal guardians will sign the program's

release form electronically. The program will issue unique user identifications and passwords to all system users (candidates, legal guardians, school staff, and principals) in their invitation packets. Users will access the system by entering their assigned user identifications and passwords, and the system will validate the user and his or her role (candidate, legal guardian, administrator) against the database. If invalid information is entered, an error message will be displayed, and access will be denied. Users may edit their passwords after they have logged in using the federally assigned user identifications and passwords. Access to various parts of the system and the application is restricted based on user role and level of authorization.

RETENTION AND DISPOSAL:

Files are retained for four years in order to verify yearbook and alumni publications and to choose current Scholars as future Advisors to the Commission. In accordance with the Department of Education's Records Disposition Schedules (ED/RDS, Part 5, Item 6), both paper and electronic files are destroyed in four-year blocks when the most recent record is four years old.

SYSTEM MANAGER AND ADDRESS:

Executive Director, U.S. Presidential Scholars Program, Community Services, Partnerships and Recognition Programs Team, Office of Intergovernmental and Interagency Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–3521.

NOTIFICATION PROCEDURE:

If you wish to determine if you have a record in this system, provide the system manager with your name, date of birth, and Social Security number. Your request must meet the regulatory requirements of 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to your record in this system, provide the system manager with your name, date of birth, and Social Security number. Your request must meet the regulatory requirements of 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record, contact the system manager. Your request must meet the regulatory requirements of 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

Information is obtained from American College Testing and the College Board/Educational Testing Service, individual candidates, their legal guardians if they are minors, and school officials (principals, teachers, and guidance counselors) in public and private secondary institutions attended by the candidates.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

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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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S. 1590/P.L. 108–141
To redesignate the facility of the United States Postal Service, located at 315 Empire Boulevard in Crown Heights, Brooklyn, New York, as the ''James E. Davis Post Office Building''. (Dec. 1, 2003; 117 Stat. 1874)

S. 254/P.L. 108–142
Kaloko-Honokohau National Historical Park Addition Act of

2003 (Dec. 2, 2003; 117 Stat. 1875)

S. 867/P.L. 108–143

To designate the facility of the United States Postal Service located at 710 Wicks Lane in Billings, Montana, as the ''Ronald Reagan Post Office Building''. (Dec. 2, 2003; 117 Stat. 1877)

S. 1718/P.L. 108–144

To designate the facility of the United States Postal Service located at 3710 West 73rd Terrace in Prairie Village, Kansas, as the ''Senator James B. Pearson Post Office''. (Dec. 2, 2003; 117 Stat. 1878)

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H.R. 1588/P.L. 108–136

National Defense Authorization Act for Fiscal Year 2004 (Nov. 24, 2003; 117 Stat. 1392)

H.R. 2754/P.L. 108–137

Energy and Water Development Appropriations Act, 2004 (Dec. 1, 2003; 117 Stat. 1827)

S. 1066/P.L. 108–138

To correct a technical error from Unit T-07 of the John H. Chafee Coastal Barrier Resources System. (Dec. 1, 2003; 117 Stat. 1869)

S.J. Res. 18/P.L. 108–139

Commending the Inspectors General for their efforts to prevent and detect waste, fraud, abuse, and mismanagement, and to promote economy, efficiency, and effectiveness in the Federal Government during the past 25 years. (Dec. 1, 2003; 117 Stat. 1870)

S.J. Res. 22/P.L. 108–140

Recognizing the Agricultural Research Service of the Department of Agriculture for 50 years of outstanding service to the Nation through agricultural research. (Dec. 1, 2003; 117 Stat. 1872)

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