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Contents

Federal Register

Vol. 69, No. 116

Thursday, June 17, 2004

Agricultural Marketing Service
NOTICES
Meetings:
Fruit and Vegetable Industry Advisory Committee, 33883

Agriculture Department
See Agricultural Marketing Service
See Forest Service
See Rural Utilities Service

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33904–33905

Centers for Medicare & Medicaid Services
See Inspector General Office, Health and Human Services Department

Chemical Safety and Hazard Investigation Board
PROPOSED RULES
Administrative claims; monetary damages filed under Federal Tort Claims Act, 33879–33882

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Developmental disabilities programs—
Family Support 360 Program and information and referral centers for youth emerging as leaders, 33905–33923

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Connecticut, 33884

Coast Guard
RULES
Boating safety:
Country of origin codes and hull identification numbers, 33858–33860
Drawbridge operations:
Florida, 33854–33856
Outer Continental Shelf activities:
Gulf of Mexico; safety zones, 33856–33858

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration

Commodity Futures Trading Commission
PROPOSED RULES
Commodity Exchange Act:
Speculative position limits, 33874–33878

Defense Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33886–33887
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals; correction, 34012
Grants and cooperative agreements; availability, etc.:
Community economic assistance for advance planning, 33887–33888

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33888–33890
Postsecondary education:
Federal Pell Grant, Perkins Loan, Work-Study, Supplemental Educational Opportunity Grant, Family Education Loan et al. programs
Federal need analysis methodology for 2005-2006 award year, 33890–33895

Election Assistance Commission
NOTICES
Meetings; Sunshine Act, 33895–33896

Employment and Training Administration
NOTICES
Adjustment assistance:
Cequent Trailer Products, 33940
Chart Industries, Inc., et al., 33940–33943
Medtronic Vascular et al., 33943–33945

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Radionuclides other than radon from DOE facilities and from Federal facilities other than NRC licensees and not covered by Subpart H
Correction, 33865–33866
Air programs:
Stratospheric ozone protection—
HCFC production, import, and export; allowance system, 34023–34033
Air quality implementation plans; approval and promulgation; various States:
Florida, 33860–33862
Georgia, 33862–33864
PROPOSED RULES
Air programs:
Stratospheric ozone protection—
HCFC production, import, and export; allowance system, 34033–34041
Water programs:
Oil pollution prevention and response; non-transportation-related onshore and offshore facilities, 34013–34017
NOTICES
Committees; establishment, renewal, termination, etc.:
Science Advisory Board, Clean Air Scientific Committee, and Clean Air Compliance Analysis Advisory Council, 33900–33901
Meetings:
Forum on State and Tribal Toxics Action, 33901–33902

Water pollution control:
Clean Water Act—
Kartchner, Paul B. and Susan D.; administrative consent agreement, 33903

Federal Aviation Administration
RULES
Airworthiness directives:
Aerospatiale, 33834–33836
Boeing, 33837–33839
Dornier, 33836–33837
McDonnell Douglas, 33833–33834
PROPOSED RULES
Airworthiness directives:
Dassault, 33872–33874
NOTICES
Antenna structures; construction, marking, and lighting:
Certified aviation obstruction/antenna structure lighting systems; non-original equipment manufacturers' components use; policy letter, 33996
Technical standard orders:
Night vision goggles, 33996–33997

Federal Communications Commission
RULES
Television broadcasting:
Broadcast auxiliary service rules, 33869–33871

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 33903

Federal Energy Regulatory Commission
NOTICES
Environmental statements; notice of intent:
Cheyenne Plains Gas Pipeline Co., L.L.C., 33898–33900
Meetings:
Sabine Pass, Golden Pass, Port Arthur LNG, Corpus Christi, Vista del Sol, Ingle Side; site visits, 33900
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 33896
ANR Storage Co., 33896–33897
CenterPoint Energy-Mississippi River Transmission Corp., 33897
EnerNOC, Inc., 33897–33898
PJM Interconnection, L.L.C., 33898
Southern Natural Gas Co., 33898

Federal Maritime Commission
NOTICES
Agreements filed, etc., 33903–33904

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 33945

Federal Motor Carrier Safety Administration
NOTICES
Motor carrier safety standards:
Driver qualifications—
Aurandt, Robert L., et al.; vision requirement exemption applications, 33997–34000

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 33904

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Recovery plans—
Atlantic salmon; Gulf of Maine distinct population segment, 33932
Endangered and threatened species and marine mammal permit applications, 33931
Endangered and threatened species permit applications, 33931–33932
Marine mammal permit applications, 33932–33933
Meetings:
North American Wetlands Conservation Council, 33933

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Acepromazine maleate injectable solution, 33839–33840
Levamisole powder for oral solution
Correction, 33839

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Michigan; correction, 33884

Forest Service
NOTICES
Meetings:
Resource Advisory Committees—
Colville, 33883

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals; correction, 34012

Geological Survey
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33933

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
RULES
Health care programs; fraud and abuse:
Healthcare Integrity and Protection Data Bank; data collection reporting requirements, 33866–33869

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
RULES
Public and Indian housing:
Indian Housing Block Grant Program; minimum funding extension, 34019–34021

Indian Affairs Bureau
NOTICES
Natural resource damage assessments; availability, etc.:
Midnite Uranium Mine, WA; injury determination, 33934–33935

Inspector General Office, Health and Human Services Department
RULES
Health care programs; fraud and abuse:
Healthcare Integrity and Protection Data Bank; data collection reporting requirements, 33866–33869

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Indian Affairs Bureau
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Modified accelerated cost recovery system property acquired in like-kind exchange or as result of involuntary conversion; depreciation
Changes in use, 33840–33848

International Trade Administration
NOTICES
Antidumping:
Industrial nitrocellulose from—
Various countries, 33884–33886

International Trade Commission
NOTICES
Import investigations:
Ironing tables and parts from—
China, 33938
Purified carboxymethylcellulose from—
Various countries, 33938–33939

Justice Department
NOTICES
Pollution control; consent judgments:
Atofina Chemicals, Inc. and General Metals of Tacoma, Inc., 33939–33940

Labor Department
See Employment and Training Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33940

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Ten Mile Rim Coal Tract, WY; Federal coal lease, 33935–33936
West Hay Creek LBA Tract, WY; Federal coal lease, 33936–33937
Meetings:
Resource Advisory Councils—
Front Range, 33937
Public land orders:
Alabama, 33937–33938
Michigan, 33938

Maritime Administration
NOTICES
Coastwise trade laws; administrative waivers:
DANA A, 34000–34001
FREE N CLEAR, 34001
ISLAND PARADISE, 34001–34002
ISLE OF CREOLA, 34002
OFF CALL, 34002
OSPREY, 34002–34003
SEA HAWK, 34003
WILLIAM H ALBURY, 34003–34004

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals; correction, 34012

National Commission on Terrorist Attacks Upon the United States
NOTICES
Hearings, 33945–33946

National Highway Traffic Safety Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34004–34005
Grants and cooperative agreements; availability, etc.:
Model impaired driving records information system demonstration, 34005–34010

National Institutes of Health
NOTICES
Environmental statements; availability, etc.:
Rocky Mountain Laboratories, Hamilton, MT; Integrated Research Facility, 33923–33926
Inventions, Government-owned; availability for licensing, 33926
Meetings:
National Cancer Institute, 33927
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 33928
National Institute of Dental and Craniofacial Research, 33928–33929
National Institute of Diabetes and Digestive and Kidney Diseases, 33929
National Institute of Mental Health, 33929–33930
National Institute on Aging, 33928
Scientific Review Center, 33930

National Mediation Board
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33946

Nuclear Regulatory Commission
NOTICES
Comprehensive Decommissioning Program:
Site Decommissioning Management Plan; designation eliminated, 33946–33947

Occupational Safety and Health Review Commission
PROPOSED RULES
Practice and procedure:
Procedure rules; revisions, 33878–33879

Rural Utilities Service
NOTICES
Environmental statements; notice of intent:
Basin Electric Power Cooperative, Inc., 33883–33884

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33947–33948
Meetings; Sunshine Act, 33948
Securities:
Foreign securities submitting information under exemption; list, 33948–33958
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 33958–33962
Boston Stock Exchange, Inc., 33962–33964
Emerging Markets Clearing Corp., 33964–33966
International Securities Exchange, Inc., 33966–33968
National Association of Securities Dealers, Inc., 33968–33984
New York Stock Exchange, Inc., 33984–33995

Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Center for Mental Health Services National Advisory Council, 33930–33931

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Maryland, 33848–33850
West Virginia, 33851–33854

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Transportation Statistics Bureau
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 33995
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 33996

Transportation Statistics Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34010–34011

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Environmental Protection Agency, 34013–34017

Part III
Housing and Urban Development Department, 34019–34021

Part IV
Environmental Protection Agency, 34023–34041

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

14 CFR
39 (4 documents) 33833, 33834, 33836, 33837
Proposed Rules:
39.....33872

17 CFR
Proposed Rules:
150.....33874

21 CFR
520.....33839
522.....33839

24 CFR
1000.....34020

26 CFR
1.....33840

29 CFR
Proposed Rules:
2200.....33878

30 CFR
920.....33848
948.....33851

33 CFR
117.....33854
147.....33856
181.....33858

40 CFR
52 (2 documents) 33860, 33862
61.....33865
82.....34024
Proposed Rules:
82.....34034
112.....34014
1620.....33879

45 CFR
61.....33866

47 CFR
74.....33869

Rules and Regulations

Federal Register
Vol. 69, No. 116
Thursday, June 17, 2004

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–75–AD; Amendment 39–13668; AD 2004–12–09]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 airplanes, that currently requires, among other actions, replacement of the existing air driven generator (ADG) wire assembly in the right air conditioning compartment with a certain new wire assembly. This amendment requires replacement of the ADG wiring and two associated clamps; inspection of the ADG wiring for correct wire identification, riding, and damage, and inspection of the associated routing/clamps for correct installation; and corrective actions if necessary. The actions specified by this AD are intended to prevent loss of the charging capability of the airplane battery due to chafing. Loss of the charging capability of the airplane battery, coupled with a loss of all normal electrical power, could prevent continued safe flight and landing of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 22, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, 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 Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–17–12, amendment 39–12403 (66 FR 44034, August 22, 2001), which is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, was published in the **Federal Register** on April 1, 2004 (69 FR 17107). The action proposed to require replacement of the air driven generator (ADG) wiring and two associated clamps; inspection of the ADG wiring for correct wire identification, riding, and damage, and inspection of the associated routing/clamps for correct installation; and corrective actions if necessary.

Comments

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

Conclusion

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

Cost Impact

There are approximately 195 airplanes of the affected design in the worldwide fleet. The FAA estimates that 81 airplanes of U.S. registry will be affected by this AD. The following table shows the estimated cost impact for airplanes affected by this AD. The average labor rate is $65 per work hour.

COST ESTIMATE

For Airplanes identified in the Service Bulletin as—	Work hours—	Parts cost—	Per airplane cost—
Group 1	2	$1,085	$1,215
Group 2	1	(None)	65
Group 3	1	(None)	65

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

AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this AD. As a result, the costs attributable to the AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12403 (66 FR 44034, August 22, 2001), and by adding a new airworthiness directive (AD), amendment 39–13668, to read as follows:

2004–12–09 McDonnell Douglas: Amendment 39–13668. Docket 2003–NM–75–AD. Supersedes AD 2001–17–12, Amendment 39–12403.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Service Bulletin MD11–24–128, Revision 05, dated June 3, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the battery charging capability of the air driven generator (ADG), that when coupled with a loss of all normal electrical power, could prevent continued safe flight and landing of the airplane, accomplish the following:

Replace, Tighten, Inspect, and Identify; as Applicable

(a) Within 1 year after the effective date of this AD, do the actions specified in paragraph (a)(1), (a)(2), or (a)(3) of Table 1 of this AD, as applicable, per the Accomplishment Instructions of Boeing Service Bulletin MD11–24–128, Revision 05, dated June 3, 2003.

TABLE 1.—REPLACE, TIGHTEN, INSPECT, AND IDENTIFY; AS APPLICABLE

For airplanes identified in the Service Bulletin as—	Action(s)—
(1) Group 1	(i) Replace the ADG wiring assembly located on the transformer panel at station Y=568.333 in the right air conditioning compartment with a new wire assembly. (ii) Replace the associated clamps and screws of the ADG wire assembly with new clamps and screws. (iii) Torque the terminal hardware to the limits specified in the service bulletin.
(2) Group 2	Do a general visual inspection of the ADG wire installation for damage/riding and correct clamping/routing.
(3) Group 3	Do a general visual inspection of the ADG wiring assembly for correct wire identification and/or damage.

Corrective Actions

(b) If any discrepancy is found during the general visual inspection required by either paragraph (a)(2) or (a)(3) of this AD, before further flight, accomplish applicable corrective actions per the Accomplishment Instructions of Boeing Service Bulletin MD11–24–128, Revision 05, dated June 3, 2003.

Alternative Methods of Compliance

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

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Bulletin MD11–24–128, Revision 05, dated June 3, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected 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; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(e) This amendment becomes effective on July 22, 2004.

Issued in Renton, Washington, on June 3, 2004.

Franklin Tiangsing,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13222 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–301–AD; Amendment 39–13672; AD 2004–12–13]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–500 and ATR72–212A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–500 and ATR72–212A series airplanes, that requires repetitive inspections for cracking of the upper closing rib of the vertical fin, related investigative actions, and corrective actions if necessary. This action is necessary to prevent interference

between the upper closing rib and the rudder, which could result in a rudder jam and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 22, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–500 and ATR72–212A series airplanes was published in the **Federal Register** on March 17, 2004 (69 FR 12589). That action proposed to require repetitive inspections for cracking of the upper closing rib of the vertical fin, related investigative actions, and corrective actions if necessary.

Comments

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

Conclusion

We have determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

We estimate that 2 Model ATR42–500 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $260, or $130 per airplane.

Currently, there are no affected Model ATR72–212A series airplanes on the U.S. Register. However, if an affected airplane is imported and placed on the U.S. Register in the future, it will be subject to the same per-airplane cost specified above for the Model ATR42–500 series airplanes.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–12–13 Aerospatiale: Amendment 39–13672. Docket 2002–NM–301–AD.

Applicability: Model ATR42–500 and ATR72–212A series airplanes; certificated in any category; on which Aerospatiale Modification 4440 has been accomplished; except those Model ATR42–500 series airplanes having serial numbers (S/Ns) 618 and subsequent; and except those Model ATR72–212A series airplanes having S/Ns 682, 683, 684, 687, and 694 and subsequent.

Compliance: Required as indicated, unless accomplished previously.

To prevent interference between the upper closing rib and the rudder, which could result in a rudder jam and consequent reduced controllability of the airplane, accomplish the following:

Service Bulletin References

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–55–0011, excluding the Accomplishment Report, dated September 26, 2002 (for Model ATR42–500 series airplanes); and Avions de Transport Regional Service Bulletin ATR72–55–1003, Revision 1, excluding the Accomplishment Report, dated November 13, 2002 (for Model ATR72–212A series airplanes); as applicable.

(1) For Model ATR72–212A series airplanes: Actions accomplished before the effective date of this AD per Avions de Transport Regional Service Bulletin ATR72–55–1003, dated October 11, 2002, are acceptable for compliance with the corresponding actions required by this AD.

(2) Where the service bulletins specify to report inspection results to the manufacturer, this AD does not require such reporting.

Repetitive Inspections

(b) Within 500 flight hours after the effective date of this AD: Perform a detailed inspection for cracking of the upper closing rib of the vertical fin, per the Accomplishment Instructions of the applicable service bulletin. Repeat this inspection thereafter at intervals not to exceed 500 flight hours.

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.''

Note 2: There is no terminating action available at this time for the repetitive inspections required by paragraph (b) of this AD.

One-Time Follow-On Inspections

(c) Before further flight following the initial detailed inspection for cracking required by paragraph (b) of this AD, measure the planarity of the upper closing rib and measure the gap between the rudder horn and the upper closing rib of the vertical fin; per paragraphs 2.C.(2) and 2.C.(3) of the Accomplishment Instructions of the applicable service bulletin.

Repair

(d) If any crack is found during any inspection required by paragraph (b) of this AD; or if any wave, anomaly, or measurement is found that is outside the limits specified in the applicable service bulletin: Before further flight, do all applicable actions in and per paragraph 2.C.(4) of the applicable service bulletin; except, where the applicable service bulletin says to contact the manufacturer for an approved repair solution, repair per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent).

Alternative Methods of Compliance

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

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Avions de Transport Regional Service Bulletin ATR42–55–0011, excluding the Accomplishment Report, dated September 26, 2002; or Avions de Transport Regional Service Bulletin ATR72–55–1003, Revision 1, excluding the Accomplishment Report, dated November 13, 2002; as applicable. Avions de Transport Regional Service Bulletin ATR72–55–1003, Revision 1, dated November 13, 2002, contains the following effective pages:

Page number	Revision level shown on page	Date shown on page
1, 2, 4, 5, 13.	1	November 13, 2002.
3, 6–12	Original	October 11, 2002.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 3: The subject of this AD is addressed in French airworthiness directive 2002–506(B) R1, dated December 24, 2002.

Effective Date

(g) This amendment becomes effective on July 22, 2004.

Issued in Renton, Washington, on June 7, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13499 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–56–AD; Amendment 39–13674; AD 2004–12–14]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires an inspection of the alternating current (AC) power cables, realignment of the AC power cable retaining clamp, and corrective actions if necessary. This action is necessary to prevent chafing of the AC power cables against the alternator, which could result in a short circuit and impaired performance of AC-powered components, possibly leading to loss of flight-critical information to the flight deck and reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 22, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of July 22, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on April 1, 2004 (69 FR 17086). That action proposed to require an inspection of the alternating current (AC) power cables, realignment of the AC power cable retaining clamp, and corrective actions if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

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

Cost Impact

We estimate that 53 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $122 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $16,801, or $317 per airplane.

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

required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–12–14 Fairchild Dornier GmbH (Formerly Dornier Luftfahrt GmbH): Amendment 39–13674. Docket 2003–NM–56–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3119 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the alternating current (AC) power cables against the alternator, which could result in a short circuit and impaired performance of AC-powered components, possibly leading to loss of flight-critical information to the flight deck and reduced controllability of the airplane, accomplish the following:

Corrective Actions

(a) Within 400 flight hours after the effective date of this AD, perform a general visual inspection of the AC power cables for damage due to chafing of the cables against the alternator, realign the cable retaining clamp, repair any damaged cables, install protective sleeving over the cables, and install cable ties; in accordance with the Accomplishment Instructions of Dornier Service Bulletin SB–328–24–433, dated April 12, 2002.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Alternative Methods of Compliance

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

Incorporation by Reference

(c) The actions shall be done in accordance with Dornier Service Bulletin SB–328–24–433, dated April 12, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 2: The subject of this AD is addressed in German airworthiness directive 2003–084, dated March 20, 2003.

Effective Date

(d) This amendment becomes effective on July 22, 2004.

Issued in Renton, Washington, on June 7, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13498 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–50–AD; Amendment 39–13675; AD 2004–12–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777–200 series airplanes, that requires a one-time general visual inspection of wire bundles routed aft of electrical disconnect panel AC2162 to determine their installation and separation, and corrective actions, if necessary. This action is necessary to prevent damage to the stabilizer cutout circuit wires in the bundles due to contact between the bundles and the adjacent galley water drain tube and hydraulic tubes, which, if followed by an active fault in the stabilizer command circuit, could result in undesired stabilizer motion that cannot be stopped, and could lead to loss of pitch control and loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 22, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of July 22, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6485; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 series airplanes was published in the **Federal Register** on November 25, 2003 (68 FR 66030). That action proposed to require a one-time general visual inspection of wire bundles routed aft of electrical disconnect panel AC2162 to determine their installation and separation, and corrective actions, if necessary.

Comments

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

Request To Reduce Compliance Time

One commenter requests that the compliance time of 18 months for accomplishing the proposed AD be reduced because of the severity of undesired stabilizer motion and the loss of pitch control of the airplane. The commenter does not suggest a new compliance time.

The FAA does not agree. In developing an appropriate compliance time, we considered the safety implications and normal maintenance schedules for timely accomplishment of the actions. In consideration of these factors, we determined that the compliance time, as proposed, represents an appropriate interval in which the actions can be accomplished, while still maintaining an adequate level of safety. However, if additional data are presented that would justify a shorter compliance time, we may consider further rulemaking on this issue. No change is made to the final rule in this regard.

Conclusion

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

Cost Impact

There are approximately 64 airplanes of the affected design in the worldwide fleet. The FAA estimates that 17 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required general visual inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,105, or $65 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–12–15 Boeing: Amendment 39–13675. Docket 2003–NM–50–AD.

Applicability: Model 777–200 series airplanes, as listed in Boeing Service Bulletin 777–27–0057, dated August 22, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the stabilizer cutout circuit wires in the bundles due to contact between the bundles and the adjacent galley water drain tube and hydraulic tubes, which, if followed by an active fault in the stabilizer command circuit, could result in undesired stabilizer motion that cannot be stopped, and could lead to loss of pitch control and loss of control of the airplane; accomplish the following:

Service Bulletin References

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin 777–27–0057, dated August 22, 2002.

Inspection

(b) Within 18 months of the effective date of this AD, perform a one-time general visual inspection of the wire bundles that route aft of electrical disconnect panel AC2162 to determine their installation and separation, in accordance with the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(c) If wire bundles are installed in accordance with the service bulletin, no further action is required by this AD.

Corrective Action

(d) If any wire bundle is not installed in accordance with the service bulletin: Before further flight, perform the actions specified in paragraphs (d)(1) and (d)(2) of this AD.

(1) Perform a detailed inspection of the wire bundle for damage, and repair all damage, in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror,

magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(2) Add clamps or tie strips to secure the wire bundles in accordance with the service bulletin.

Alternative Methods of Compliance

(e) 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.

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Service Bulletin 777–27–0057, dated August 22, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(g) This amendment becomes effective on July 22, 2004.

Issued in Renton, Washington, on June 7, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13497 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Levamisole Powder for Oral Solution; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Correcting amendments.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that amended the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) that appeared in the **Federal Register** of March 2, 2004 (69 FR 9753). FDA is correcting the formatting of a citation of approved conditions of use for levamisole powder for oral solution in cattle. This correction is being made so the regulations accurately cite approved conditions of use of this animal drug product.

DATES: This rule is effective June 17, 2004.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4567, e-mail: *george.haibel@fda.gov*.

SUPPLEMENTARY INFORMATION: For the reasons set forth in the preamble, FDA is correcting part 520 to read as follows:

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is corrected by making the following amendment:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1242a [Corrected]

■ 2. In § 520.1242a, paragraph (b)(2), remove the reference ''(e)(1)(ii)(a)'' and add in its place ''(e)(1)(ii)(A)''.

Dated: June 4, 2004.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 04–13603 Filed 6–16–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Acepromazine Maleate Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Boehringer Ingelheim Vetmedica, Inc. The ANADA provides for the veterinary prescription use of acepromazine maleate injectable solution in dogs, cats, and horses as a tranquilizer.

DATES: This rule is effective June 17, 2004.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Hwy., St. Joseph, MO 64506–2002, filed ANADA 200–361 that provides for the veterinary prescription use of Acepromazine Maleate (acepromazine maleate) Injection in dogs, cats, and horses as a tranquilizer. Boehringer Ingelheim Vetmedica's Acepromazine Maleate Injection is approved as a generic copy of Fort Dodge Animal Health's PROMACE Injectable approved under NADA 15–030. The ANADA is approved as of April 14, 2004, and the regulations are amended in 21 CFR 522.23 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.23 [Amended]

■ 2. Section 522.23 is amended in paragraph (b), introductory text, by removing ''000856 and 059130'' and by adding in its place ''000010, 000856, and 059130''.

Dated: May 18, 2004.

Andrew J. Beaulieu,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 04–13602 Filed 4–16–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9132]

RIN 1545–BB05

Changes in Use Under Section 168(i)(5)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the depreciation of property subject to section 168 of the Internal Revenue Code (MACRS property). Specifically, these regulations provide guidance on how to depreciate MACRS property for which the use changes in the hands of the same taxpayer. The regulations reflect changes to the law made by the Tax Reform Act of 1986.

DATES: *Effective Date:* These regulations are effective June 17, 2004.

Applicability Date: For dates of applicability, see §§ 1.168(i)–1(l)(2) and 1.168(i)–4(g).

FOR FURTHER INFORMATION CONTACT: Sara Logan or Kathleen Reed, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On July 21, 2003, the IRS and Treasury Department published a notice of proposed rulemaking in the **Federal Register** (REG–138499–02; 68 FR 43047), relating to a change in the use of MACRS property in the hands of the same taxpayer (change in the use) under section 168(i)(5) of the Internal Revenue Code (Code) and relating to a change in the use of assets in a general asset account under section 168(i)(4). On March 1, 2004, §§ 1.168(a)–1 and 1.168(b)–1 that were contained in this notice of proposed rulemaking were withdrawn (REG–138499–02; 69 FR 9560). No public hearing was requested or held. Written or electronic comments responding to the notice of proposed rulemaking were received. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed below.

Explanation of Provisions

Scope

The final regulations provide the rules for determining the annual depreciation allowance under section 168 for MACRS property as a result of a change in the use of such property. Changes in the use include a conversion of personal use property to a business or income-producing use, a conversion of MACRS property to personal use, or a change in the use of MACRS property that results in a different recovery period, depreciation method, or both.

I. Conversion to Business Use

The final regulations retain the rules contained in the proposed regulations, providing that personal use property converted to business or income-producing use is treated as being placed in service by the taxpayer on the date of the conversion. Thus, the property is depreciated by using the applicable depreciation method, recovery period, and convention prescribed under section 168 for the property beginning in the taxable year the change in the use occurs (year of change). No comments were received suggesting changes to these rules. The final regulations, however, clarify that these rules do not apply when another section of the Code (or regulations under that section) prescribes the depreciation treatment for a change to business use. For example, if listed property (as defined in section 280F(d)(4)) is predominantly used by a taxpayer in a qualified business use in a taxable year, then in a subsequent taxable year is exclusively used by the taxpayer for personal purposes, and then in a later taxable year is predominantly used by the taxpayer in a qualified business use, section 280F(b)(2)(A) requires that the property be depreciated under the alternative depreciation system of section 168(g) in the later taxable year and subsequent taxable years.

II. Conversion to Personal Use

The final regulations retain the rule contained in the proposed regulations providing that a conversion of MACRS property from business or income-producing use to personal use is treated as a disposition of the property. Depreciation for the year of change is computed by taking into account the applicable convention. No gain, loss, or depreciation recapture is recognized upon the conversion. A commentator questioned whether recapture of excess depreciation under section 280F(b)(2) occurs upon a conversion of listed property from business use to only personal use. Upon this conversion, the listed property is not predominantly used in a qualified business use for that taxable year for purposes of section 280F(b) and, consequently, section 280F(b)(2) requires any excess depreciation (as defined in section 280F(b)(2)(B)) to be included in gross income for the taxable year in which the listed property is converted to personal use. Accordingly, the IRS and Treasury Department have included a cross-reference to section 280F(b)(2) in the final regulations.

III. MACRS Property—Use Changes After Placed-In-Service Year

The final regulations provide rules for MACRS property if a change in the use of the property occurs after the property's placed-in-service year but the property continues to be MACRS property in the hands of the taxpayer.

A. *Determination of a change in the use.* The final regulations remain unchanged from the proposed regulations. Consequently, a change in the use of MACRS property generally occurs when the primary use of the MACRS property in the taxable year is different from its primary use in the immediately preceding taxable year. However, in determining whether a taxpayer begins or ceases to use MACRS property predominantly outside the United States, the predominant use, instead of the primary use, of the MACRS property governs. A commentator questioned how this predominant use test is applied to rolling stock (for example, locomotives, freight and passenger train cars) that is not described under section 168(g)(4)(B) and that is used within and without the United States. This question concerns how to trace the movement of this rolling stock to determine its physical location, which the IRS and Treasury Department believe is beyond the scope of these regulations.

B. *Change in the use of MACRS property resulting in a different recovery period and/or depreciation method.* The final regulations retain the rules contained in the proposed regulations for determining the applicable depreciation method, recovery period, and convention used to determine the depreciation allowances for the MACRS

property for the year of change and subsequent taxable years. Consequently, if a change in the use of MACRS property results in a shorter recovery period and/or a more accelerated depreciation method (for example, MACRS property ceases to be used predominantly outside the United States), the adjusted depreciable basis of the MACRS property as of the beginning of the year of change is depreciated over the shorter recovery period and/or by the more accelerated depreciation method beginning with the year of change as though the MACRS property is placed in service by the taxpayer in the year of change. If a change in the use of MACRS property results in a longer recovery period and/or a slower depreciation method (for example, MACRS property begins to be used predominantly outside the United States), the adjusted depreciable basis of the MACRS property as of the beginning of the year of change is depreciated over the longer recovery period and/or by the slower depreciation method beginning with the year of change as though the taxpayer originally placed the MACRS property in service with the longer recovery period and/or slower depreciation method.

A commentator suggested that the depreciation allowances for all changes in the use of MACRS property resulting in a different recovery period and/or depreciation method be determined beginning with the year of change by treating the new depreciation method and/or recovery period as though they applied from the date the MACRS property was originally placed in service by the taxpayer. The commentator, in effect, is requesting that the rule contained in the proposed regulations for a change in the use of MACRS property that results in a longer recovery period and/or slower depreciation method also apply to a change in the use of MACRS property that results in a shorter recovery period and/or a more accelerated depreciation method. The IRS and Treasury Department continue to believe that the rules contained in the proposed regulations are reasonable because the rules determine the depreciation allowance for any taxable year based on the primary use of the MACRS property by the taxpayer during that year. Further, for a change in the use of MACRS property that results in a shorter recovery period and/or a more accelerated depreciation method, the taxpayer either may determine the depreciation allowances as though the MACRS property is placed-in-service by the taxpayer in the year of change or may elect to disregard the change in the use and determine the depreciation allowances as though the change in the use had not occurred. As a result, the final regulations do not require a recovery period that is longer than the recovery period applicable for the MACRS property in the taxable year immediately preceding the year of change. Accordingly, the commentator's suggestion was not accepted.

Another commentator requested that *Example 4* in § 1.168(i)–5(d)(6) be clarified by stating which optional depreciation tables the transaction coefficient factors are drawn from. The IRS and Treasury Department have adopted this suggestion.

IV. Change in the Use During the Placed-in-Service Year

The final regulations retain the rules contained in the proposed regulations if a change in the use of MACRS property occurs during the taxable year the property is placed in service and the property continues to be MACRS property in the hands of the taxpayer. Accordingly, if the use of MACRS property changes during its placed-in-service year, the depreciation allowance generally is determined by the primary use of the property during that taxable year. However, in determining whether MACRS property is used within or outside the United States during the placed-in-service year, the predominant use, instead of the primary use, of the MACRS property governs. Further, in determining whether MACRS property is tax-exempt use property or imported property covered by an Executive order during the placed-in-service year, the use of the property at the end of the placed-in-service year governs. Moreover, MACRS property is tax-exempt bond financed property during the placed-in-service year if a tax-exempt bond for the MACRS property is issued during the placed-in-service year.

V. General Asset Accounts

Finally, the regulations amend the final regulations under section 168(i)(4) (TD 8566, 59 FR 51369 (1994) and the temporary regulations under section 168(i)(4) (TD 9115, 69 FR 9529 (2004)) for property accounted for in a general asset account for which the use of the property changes, resulting in a different recovery period and/or depreciation method. These amendments are the same rules contained in the proposed regulations.

Effective Dates

These regulations are applicable for any change in the use of MACRS property in a taxable year ending on or after June 17, 2004. For any change in the use of MACRS property after December 31, 1986, in a taxable year ending before June 17, 2004, the IRS will allow any reasonable method of depreciating the property under section 168 in the year of change and the subsequent taxable years that is consistently applied to the MACRS property for which the use changes in the hands of the same taxpayer. However, a taxpayer may choose, on a property-by-property basis, to apply the final regulations to a change in the use of MACRS property after December 31, 1986, in a taxable year ending before June 17, 2004. In this case and consistent with Chief Counsel Notice 2004–007, Change in Litigating Position—Application of Section 446(e) to Changes in Computing Depreciation (CC–2004–007, January 28, 2004, at the IRS Internet site at *www.irs.gov/foia*), a change to the method of accounting for depreciation provided in the final regulations due to a change in the use of MACRS property in a taxable year ending on or after December 30, 2003, is a change in method of accounting and a change to the method of accounting for depreciation provided in the final regulations due to a change in the use of MACRS property after December 31, 1986, in a taxable year ending before December 30, 2003, may be treated by the taxpayer as a change in method of accounting.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Sara Logan, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

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

Section 1.168(i)–4 also issued under 26 U.S.C. 168(i)(5). * * *

■ **Par. 2.** Section 1.168(i)–0 is amended by revising the entry for § 1.168(i)–1(h)(2) and adding entries for § 1.168(i)–1(h)(2)(i) through (h)(2)(iii) to read as follows:

§ 1.168(i)–0 Table of contents for the general asset account rules.

* * * * *

§ 1.168(i)–1 General asset accounts.

* * * * *

(h) * * *

(2) Change in use results in a different recovery period and/or depreciation method.

(i) No effect on general asset account election.

(ii) Asset is removed from the general asset account.

(iii) New general asset account is established.

* * * * *

■ **Par. 3.** Section 1.168(i)–1 is amended by:

■ 1. Revising paragraph (b)(1).

■ 2. Amending paragraph (c)(2)(ii) by:

■ a. Removing the language ''and'' from the end of paragraph (c)(2)(ii)(C).

■ b. Removing the period ''.'' from the end of paragraph (c)(2)(ii)(D) and adding ''; and'' in its place.

■ c. Revising paragraph (c)(2)(ii)(E).

■ 3. Removing the language ''the change in use occurs and'' from the last sentence of paragraph (h)(1) and adding ''the change in use occurs (the year of change) and'' in its place.

■ 4. Revising paragraph (h)(2).

■ 5. Removing the language ''(h)(1)'' from paragraph (k)(1) and adding ''(h)'' in its place.

■ 6. Revising paragraph (l).

The revisions read as follows:

§ 1.168(i)–1 General asset accounts.

* * * * *

(b) * * *

(1) *Unadjusted depreciable basis* is the basis of an asset for purposes of section 1011 without regard to any adjustments described in section 1016(a)(2) and (3). This basis reflects the reduction in basis for the percentage of the taxpayer's use of property for the taxable year other than in the taxpayer's trade or business (or for the production of income), for any portion of the basis the taxpayer properly elects to treat as an expense under section 179, and for any adjustments to basis provided by other provisions of the Internal Revenue Code and the regulations under the Internal Revenue Code (other than section 1016(a)(2) and (3)) (for example, a reduction in basis by the amount of the disabled access credit pursuant to section 44(d)(7)). For property subject to a lease, see section 167(c)(2).

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(E) Assets subject to paragraph (h)(2)(iii)(A) of this section (change in use results in a shorter recovery period and/or a more accelerated depreciation method) for which the depreciation allowance for the year of change (as defined in § 1.168(i)–4(a)) is not determined by using an optional depreciation table must be grouped into a separate general asset account.

* * * * *

(h) * * *

(2) *Change in use results in a different recovery period and/or depreciation method*—(i) *No effect on general asset account election.* A change in the use described in § 1.168(i)–4(d) (change in use results in a different recovery period and/or depreciation method) of an asset in a general asset account shall not cause or permit the revocation of the election made under this section.

(ii) *Asset is removed from the general asset account.* Upon a change in the use described in § 1.168(i)–4(d), the taxpayer must remove the asset from the general asset account as of the first day of the year of change and must make the adjustments to the general asset account described in paragraphs (e)(3)(iii)(C)(*2*) through (*4*) of this section. If, however, the result of the change in use is described in § 1.168(i)–4(d)(3) (change in use results in a shorter recovery period and/or a more accelerated depreciation method) and the taxpayer elects to treat the asset as though the change in use had not occurred pursuant to § 1.168(i)–4(d)(3)(ii), no adjustment is made to the general asset account upon the change in use.

(iii) *New general asset account is established*—(A) *Change in use results in a shorter recovery period and/or a more accelerated depreciation method.* If the result of the change in use is described in § 1.168(i)–4(d)(3) (change in use results in a shorter recovery period and/or a more accelerated depreciation method) and adjustments to the general asset account are made pursuant to paragraph (h)(2)(ii) of this section, the taxpayer must establish a new general asset account for the asset in the year of change in accordance with the rules in paragraph (c) of this section, except that the adjusted depreciable basis of the asset as of the first day of the year of change is included in the general asset account. For purposes of paragraph (c)(2) of this section, the applicable depreciation method, recovery period, and convention are determined under § 1.168(i)–4(d)(3)(i).

(B) *Change in use results in a longer recovery period and/or a slower depreciation method.* If the result of the change in use is described in § 1.168(i)–4(d)(4) (change in use results in a longer recovery period and/or a slower depreciation method), the taxpayer must establish a separate general asset account for the asset in the year of change in accordance with the rules in paragraph (c) of this section, except that the unadjusted depreciable basis of the asset, and the greater of the depreciation of the asset allowed or allowable in accordance with section 1016(a)(2), as of the first day of the year of change are included in the newly established general asset account. Consequently, this general asset account as of the first day of the year of change will have a beginning balance for both the unadjusted depreciable basis and the depreciation reserve of the general asset account. For purposes of paragraph (c)(2) of this section, the applicable depreciation method, recovery period, and convention are determined under § 1.168(i)–4(d)(4)(ii).

* * * * *

(l) *Effective dates*—(1) [Reserved]. For further guidance, see § 1.168(i)–1T(l)(1).

(2) *Exceptions*—(i) *In general*—(A) Paragraph (b)(1) of this section applies on or after June 17, 2004. For the applicability of § 1.168(i)–1(b)(1) before June 17, 2004, see § 1.168(i)–1(b)(1) in effect prior to June 17, 2004 (§ 1.168(i)–1(b)(1) as contained in 26 CFR part 1 edition revised as of April 1, 2004).

(B) Paragraphs (c)(2)(ii)(E) and (h)(2) of this section apply to any change in the use of depreciable assets pursuant to § 1.168(i)–4(d) in a taxable year ending on or after June 17, 2004. For any change in the use of depreciable assets as described in § 1.168(i)–4(d) after December 31, 1986, in a taxable year ending before June 17, 2004, the Internal Revenue Service will allow any reasonable method that is consistently

applied to the taxpayer's general asset accounts or the taxpayer may choose, on an asset-by-asset basis, to apply paragraphs (c)(2)(ii)(E) and (h)(2) of this section.

(ii) *Change in method of accounting*—(A) *In general.* If a taxpayer adopted a method of accounting for general asset account treatment due to a change in the use of depreciable assets pursuant to § 1.168(i)–4(d) in a taxable year ending on or after December 30, 2003, and the method adopted is not in accordance with the method of accounting provided in paragraphs (c)(2)(ii)(E) and (h)(2) of this section, a change to the method of accounting provided in paragraphs (c)(2)(ii)(E) and (h)(2) of this section is a change in method of accounting to which the provisions of section 446(e) and the regulations under section 446(e) apply. However, if a taxpayer adopted a method of accounting for general asset account treatment due to a change in the use of depreciable assets pursuant to § 1.168(i)–4(d) after December 31, 1986, in a taxable year ending before December 30, 2003, and the method adopted is not in accordance with the method of accounting provided in paragraphs (c)(2)(ii)(E) and (h)(2) of this section, the taxpayer may treat the change to the method of accounting provided in paragraphs (c)(2)(ii)(E) and (h)(2) of this section as a change in method of accounting to which the provisions of section 446(e) and the regulations under section 446(e) apply.

(B) *Automatic consent to change method of accounting.* A taxpayer changing its method of accounting in accordance with this paragraph (l)(2)(ii) must follow the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in method of accounting (for further guidance, for example, see Rev. Proc. 2002–9 (2002–1 C.B. 327), as modified by Rev. Proc. 2004–11 (2004–3 I.R.B. 311) (see § 601.601(d)(2)(ii)(*b*) of this chapter)). Because this change does not change the adjusted depreciable basis of the asset, the method change is made on a cut-off basis and, therefore, no adjustment under section 481(a) is required or allowed. For purposes of Form 3115, *Application for Change in Accounting Method*, the designated number for the automatic accounting method change authorized by this paragraph (l)(2)(ii) is ''87.'' If Form 3115 is revised or renumbered, any reference in this section to that form is treated as a reference to the revised or renumbered form.

(3) [Reserved]. For further guidance, see § 1.168(i)–1T(l)(3).

■ **Par. 4.** Section 1.168(i)–1T is amended by:

■ 1. Revising paragraphs (c)(2)(ii)(E) and (l)(2).

■ 2. Removing the language ''(h)(1) (conversion to personal use)'' from paragraphs (d)(2) and (i) and adding ''(h) (changes in use)'' in its place.

■ 3. Removing the language ''(h)(1)'' from paragraph (j) and adding ''(h)'' in its place.

The revisions read as follows:

§ 1.168(i)–1T General asset accounts (temporary).

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(E) [Reserved]. For further guidance, see § 1.168(i)–1(c)(2)(ii)(E).

* * * * *

(l) * * *

(2) [Reserved]. For further guidance, see § 1.168(i)–1(l)(2).

* * * * *

■ **Par. 5.** Section 1.168(i)–4 is added to read as follows: §1.168(i)–4 Changes in use.

(a) *Scope.* This section provides the rules for determining the depreciation allowance for MACRS property (as defined in § 1.168(b)–1T(a)(2)) for which the use changes in the hands of the same taxpayer (change in the use). The allowance for depreciation under this section constitutes the amount of depreciation allowable under section 167(a) for the year of change and any subsequent taxable year. For purposes of this section, the year of change is the taxable year in which a change in the use occurs.

(b) *Conversion to business or income-producing use*—(1) *Depreciation deduction allowable.* This paragraph (b) applies to property that is converted from personal use to use in a taxpayer's trade or business, or for the production of income, during a taxable year. This conversion includes property that was previously used by the taxpayer for personal purposes, including real property (other than land) that is acquired before 1987 and converted from personal use to business or income-producing use after 1986, and depreciable property that was previously used by a tax-exempt entity before the entity changed to a taxable entity. Except as otherwise provided by the Internal Revenue Code or regulations under the Internal Revenue Code, upon a conversion to business or income-producing use, the depreciation allowance for the year of change and any subsequent taxable year is determined as though the property is placed in service by the taxpayer on the date on which the conversion occurs. Thus, except as otherwise provided by the Internal Revenue Code or regulations under the Internal Revenue Code, the taxpayer must use any applicable depreciation method, recovery period, and convention prescribed under section 168 for the property in the year of change, consistent with any election made under section 168 by the taxpayer for that year (see, for example, section 168(b)(5)). See §§ 1.168(k)–1T(f)(6)(iii) and 1.1400L(b)–1T(f)(6) for the additional first year depreciation deduction rules applicable to a conversion to business or income-producing use. The depreciable basis of the property for the year of change is the lesser of its fair market value or its adjusted depreciable basis (as defined in § 1.168(b)–1T(a)(4)), as applicable, at the time of the conversion to business or income-producing use.

(2) *Example.* The application of this paragraph (b) is illustrated by the following example:

Example. A, a calendar-year taxpayer, purchases a house in 1985 that she occupies as her principal residence. In February 2004, A ceases to occupy the house and converts it to residential rental property. At the time of the conversion to residential rental property, the house's fair market value (excluding land) is $130,000 and adjusted depreciable basis attributable to the house (excluding land) is $150,000. Pursuant to this paragraph (b), A is considered to have placed in service residential rental property in February 2004 with a depreciable basis of $130,000. A depreciates the residential rental property under the general depreciation system by using the straight-line method, a 27.5-year recovery period, and the mid-month convention. Pursuant to §§ 1.168(k)–1T(f)(6)(iii)(B) or 1.1400L(b)–1T(f)(6), this property is not eligible for the additional first year depreciation deduction provided by section 168(k) or section 1400L(b). Thus, the depreciation allowance for the house for 2004 is $4,137, after taking into account the mid-month convention (($130,000 adjusted depreciable basis multiplied by the applicable depreciation rate of 3.636% (1/27.5)) multiplied by the mid-month convention fraction of 10.5/12). The amount of depreciation computed under section 168, however, may be limited under other provisions of the Internal Revenue Code, such as, section 280A.

(c) *Conversion to personal use.* The conversion of MACRS property from business or income-producing use to personal use during a taxable year is treated as a disposition of the property in that taxable year. The depreciation allowance for MACRS property for the year of change in which the property is treated as being disposed of is determined by first multiplying the

adjusted depreciable basis of the property as of the first day of the year of change by the applicable depreciation rate for that taxable year (for further guidance, for example, see section 6 of Rev. Proc. 87–57 (1987–2 C. B. 687, 692) (see § 601.601(d)(2)(ii)(*b*) of this chapter)). This amount is then multiplied by a fraction, the numerator of which is the number of months (including fractions of months) the property is deemed to be placed in service during the year of change (taking into account the applicable convention) and the denominator of which is 12. No depreciation deduction is allowable for MACRS property placed in service and disposed of in the same taxable year. See §§ 1.168(k)–1T(f)(6)(ii) and 1.1400L(b)–1T(f)(6) for the additional first year depreciation deduction rules applicable to property placed in service and converted to personal use in the same taxable year. Upon the conversion to personal use, no gain, loss, or depreciation recapture under section 1245 or section 1250 is recognized. However, the provisions of section 1245 or section 1250 apply to any disposition of the converted property by the taxpayer at a later date. For listed property (as defined in section 280F(d)(4)), see section 280F(b)(2) for the recapture of excess depreciation upon the conversion to personal use.

(d) *Change in the use results in a different recovery period and/or depreciation method*—(1) *In general.* This paragraph (d) applies to a change in the use of MACRS property during a taxable year subsequent to the placed-in-service year, if the property continues to be MACRS property owned by the same taxpayer and, as a result of the change in the use, has a different recovery period, a different depreciation method, or both. For example, this paragraph (d) applies to MACRS property that—

(i) Begins or ceases to be used predominantly outside the United States;

(ii) Results in a reclassification of the property under section 168(e) due to a change in the use of the property; or

(iii) Begins or ceases to be tax-exempt use property (as defined in section 168(h)).

(2) *Determination of change in the use*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, a change in the use of MACRS property occurs when the primary use of the MACRS property in the taxable year is different from its primary use in the immediately preceding taxable year. The primary use of MACRS property may be determined in any reasonable manner that is consistently applied to the taxpayer's MACRS property.

(ii) *Alternative depreciation system property*—(A) *Property used within or outside the United States.* A change in the use of MACRS property occurs when a taxpayer begins or ceases to use MACRS property predominantly outside the United States during the taxable year. The determination of whether MACRS property is used predominantly outside the United States is made in accordance with the test in § 1.48–1(g)(1)(i) for determining predominant use.

(B) *Tax-exempt bond financed property.* A change in the use of MACRS property occurs when the property changes to tax-exempt bond financed property, as described in section 168(g)(1)(C) and (g)(5), during the taxable year. For purposes of this paragraph (d), MACRS property changes to tax-exempt bond financed property when a tax-exempt bond is first issued after the MACRS property is placed in service. MACRS property continues to be tax-exempt bond financed property in the hands of the taxpayer even if the tax-exempt bond (including any refunding issue) is no longer outstanding or is redeemed.

(C) *Other mandatory alternative depreciation system property.* A change in the use of MACRS property occurs when the property changes to, or changes from, property described in section 168(g)(1)(B) (tax-exempt use property) or (D) (imported property covered by an Executive order) during the taxable year.

(iii) *Change in the use deemed to occur on first day of the year of change.* If a change in the use of MACRS property occurs under this paragraph (d)(2), the depreciation allowance for that MACRS property for the year of change is determined as though the use of the MACRS property changed on the first day of the year of change.

(3) *Change in the use results in a shorter recovery period and/or a more accelerated depreciation method*—(i) *Treated as placed in service in the year of change*—(A) *In general.* If a change in the use results in the MACRS property changing to a shorter recovery period and/or a depreciation method that is more accelerated than the method used for the MACRS property before the change in the use, the depreciation allowances beginning in the year of change are determined as though the MACRS property is placed in service by the taxpayer in the year of change.

(B) *Computation of depreciation allowance.* The depreciation allowances for the MACRS property for any 12-month taxable year beginning with the year of change are determined by multiplying the adjusted depreciable basis of the MACRS property as of the first day of each taxable year by the applicable depreciation rate for each taxable year. In determining the applicable depreciation rate for the year of change and subsequent taxable years, the taxpayer must use any applicable depreciation method and recovery period prescribed under section 168 for the MACRS property in the year of change, consistent with any election made under section 168 by the taxpayer for that year (see, for example, section 168(b)(5)). If there is a change in the use of MACRS property, the applicable convention that applies to the MACRS property is the same as the convention that applied before the change in the use of the MACRS property. However, the depreciation allowance for the year of change for the MACRS property is determined without applying the applicable convention, unless the MACRS property is disposed of during the year of change. See paragraph (d)(5) of this section for the rules relating to the computation of the depreciation allowance under the optional depreciation tables. If the year of change or any subsequent taxable year is less than 12 months, the depreciation allowance determined under this paragraph (d)(3)(i) must be adjusted for a short taxable year (for further guidance, for example, see Rev. Proc. 89–15 (1989–1 C.B. 816) (see § 601.601(d)(2)(ii)(*b*) of this chapter)).

(C) *Special rules.* MACRS property affected by this paragraph (d)(3)(i) is not eligible in the year of change for the election provided under section 168(f)(1), 179, or 1400L(f), or for the additional first year depreciation deduction provided in section 168(k) or 1400L(b). See §§ 1.168(k)–1T(f)(6)(iv) and 1.1400L(b)–1T(f)(6) for other additional first year depreciation deduction rules applicable to a change in the use of MACRS property subsequent to its placed-in-service year. For purposes of determining whether the mid-quarter convention applies to other MACRS property placed in service during the year of change, the unadjusted depreciable basis (as defined in § 1.168(b)–1T(a)(3)) or the adjusted depreciable basis of MACRS property affected by this paragraph (d)(3)(i) is not taken into account.

(ii) *Option to disregard the change in the use.* In lieu of applying paragraph (d)(3)(i) of this section, the taxpayer may elect to determine the depreciation allowance as though the change in the use had not occurred. The taxpayer elects this option by claiming on the taxpayer's timely filed (including

extensions) Federal income tax return for the year of change the depreciation allowance for the property as though the change in the use had not occurred. See paragraph (g)(2) of this section for the manner for revoking this election.

(4) *Change in the use results in a longer recovery period and/or a slower depreciation method*—(i) *Treated as originally placed in service with longer recovery period and/or slower depreciation method.* If a change in the use results in a longer recovery period and/or a depreciation method for the MACRS property that is less accelerated than the method used for the MACRS property before the change in the use, the depreciation allowances beginning with the year of change are determined as though the MACRS property had been originally placed in service by the taxpayer with the longer recovery period and/or the slower depreciation method. MACRS property affected by this paragraph (d)(4) is not eligible in the year of change for the election provided under section 168(f)(1), 179, or 1400L(f), or for the additional first year depreciation deduction provided in section 168(k) or 1400L(b). See §§ 1.168(k)–1T(f)(6)(iv) and 1.1400L(b)–1T(f)(6) for other additional first year depreciation deduction rules applicable to a change in the use of MACRS property subsequent to its placed-in-service year.

(ii) *Computation of the depreciation allowance.* The depreciation allowances for the MACRS property for any 12-month taxable year beginning with the year of change are determined by multiplying the adjusted depreciable basis of the MACRS property as of the first day of each taxable year by the applicable depreciation rate for each taxable year. If there is a change in the use of MACRS property, the applicable convention that applies to the MACRS property is the same as the convention that applied before the change in the use of the MACRS property. If the year of change or any subsequent taxable year is less than 12 months, the depreciation allowance determined under this paragraph (d)(4)(ii) must be adjusted for a short taxable year (for further guidance, for example, see Rev. Proc. 89–15 (1989–1 C.B. 816) (see § 601.601(d)(2)(ii)(*b*) of this chapter)). See paragraph (d)(5) of this section for the rules relating to the computation of the depreciation allowance under the optional depreciation tables. In determining the applicable depreciation rate for the year of change and any subsequent taxable year—

(A) The applicable depreciation method is the depreciation method that would apply in the year of change and any subsequent taxable year for the MACRS property had the taxpayer used the longer recovery period and/or the slower depreciation method in the placed-in-service year of the property. If the 200-or 150-percent declining balance method would have applied in the placed-in-service year but the method would have switched to the straight line method in the year of change or any prior taxable year, the applicable depreciation method beginning with the year of change is the straight line method; and

(B) The applicable recovery period is either—

(*1*) The longer recovery period resulting from the change in the use if the applicable depreciation method is the 200-or 150-percent declining balance method (as determined under paragraph (d)(4)(ii)(A) of this section) unless the recovery period did not change as a result of the change in the use, in which case the applicable recovery period is the same recovery period that applied before the change in the use; or

(*2*) The number of years remaining as of the beginning of each taxable year (taking into account the applicable convention) had the taxpayer used the longer recovery period in the placed-in-service year of the property if the applicable depreciation method is the straight line method (as determined under paragraph (d)(4)(ii)(A) of this section) unless the recovery period did not change as a result of the change in the use, in which case the applicable recovery period is the number of years remaining as of the beginning of each taxable year (taking into account the applicable convention) based on the recovery period that applied before the change in the use.

(5) *Using optional depreciation tables*—(i) *Taxpayer not bound by prior use of table.* If a taxpayer used an optional depreciation table for the MACRS property before a change in the use, the taxpayer is not bound to use the appropriate new table for that MACRS property beginning in the year of change (for further guidance, for example, see section 8 of Rev. Proc. 87–57 (1987–2 C.B. 687, 693) (see § 601.601(d)(2)(ii)(*b*) of this chapter)). If a taxpayer did not use an optional depreciation table for MACRS property before a change in the use and the change in the use results in a shorter recovery period and/or a more accelerated depreciation method (as described in paragraph (d)(3)(i) of this section), the taxpayer may use the appropriate new table for that MACRS property beginning in the year of change. If a taxpayer chooses not to use the optional depreciation table, the depreciation allowances for the MACRS property beginning in the year of change are determined under paragraph (d)(3)(i) or (4) of this section, as applicable.

(ii) *Taxpayer chooses to use optional depreciation table after a change in the use.* If a taxpayer chooses to use an optional depreciation table for the MACRS property after a change in the use, the depreciation allowances for the MACRS property for any 12-month taxable year beginning with the year of change are determined as follows:

(A) *Change in the use results in a shorter recovery period and/or a more accelerated depreciation method.* If a change in the use results in a shorter recovery period and/or a more accelerated depreciation method (as described in paragraph (d)(3)(i) of this section), the depreciation allowances for the MACRS property for any 12-month taxable year beginning with the year of change are determined by multiplying the adjusted depreciable basis of the MACRS property as of the first day of the year of change by the annual depreciation rate for each recovery year (expressed as a decimal equivalent) specified in the appropriate optional depreciation table. The appropriate optional depreciation table for the MACRS property is based on the depreciation system, depreciation method, recovery period, and convention applicable to the MACRS property in the year of change as determined under paragraph (d)(3)(i) of this section. The depreciation allowance for the year of change for the MACRS property is determined by taking into account the applicable convention (which is already factored into the optional depreciation tables). If the year of change or any subsequent taxable year is less than 12 months, the depreciation allowance determined under this paragraph (d)(5)(ii)(A) must be adjusted for a short taxable year (for further guidance, for example, see Rev. Proc. 89–15 (1989–1 C.B. 816) (see § 601.601(d)(2)(ii)(*b*) of this chapter)).

(B) *Change in the use results in a longer recovery period and/or a slower depreciation method*—(*1*) *Determination of the appropriate optional depreciation table.* If a change in the use results in a longer recovery period and/or a slower depreciation method (as described in paragraph (d)(4)(i) of this section), the depreciation allowances for the MACRS property for any 12-month taxable year beginning with the year of change are determined by choosing the optional depreciation table that corresponds to the depreciation system, depreciation method, recovery period, and convention that would have applied to

the MACRS property in the placed-in-service year had that property been originally placed in service by the taxpayer with the longer recovery period and/or the slower depreciation method. If there is a change in the use of MACRS property, the applicable convention that applies to the MACRS property is the same as the convention that applied before the change in the use of the MACRS property. If the year of change or any subsequent taxable year is less than 12 months, the depreciation allowance determined under this paragraph (d)(5)(ii)(B) must be adjusted for a short taxable year (for further guidance, for example, see Rev. Proc. 89–15 (1989–1 C.B. 816) (see § 601.601(d)(2)(ii)(*b*) of this chapter)).

(*2*) *Computation of the depreciation allowance*. The depreciation allowances for the MACRS property for any 12-month taxable year beginning with the year of change are computed by first determining the appropriate recovery year in the table identified under paragraph (d)(5)(ii)(B)(*1*) of this section. The appropriate recovery year for the year of change is the year that corresponds to the year of change. For example, if the recovery year for the year of change would have been Year 4 in the table that applied before the change in the use of the MACRS property, then the recovery year for the year of change is Year 4 in the table identified under paragraph (d)(5)(ii)(B)(*1*) of this section. Next, the annual depreciation rate (expressed as a decimal equivalent) for each recovery year is multiplied by a transaction coefficient. The transaction coefficient is the formula (1 / (1 − x)) where x equals the sum of the annual depreciation rates from the table identified under paragraph (d)(5)(ii)(B)(*1*) of this section (expressed as a decimal equivalent) for the taxable years beginning with the placed-in-service year of the MACRS property through the taxable year immediately prior to the year of change. The product of the annual depreciation rate and the transaction coefficient is multiplied by the adjusted depreciable basis of the MACRS property as of the beginning of the year of change.

(6) *Examples*. The application of this paragraph (d) is illustrated by the following examples:

Example 1. Change in the use results in a shorter recovery period and/or a more accelerated depreciation method and optional depreciation table is not used—(i) *X*, a calendar-year corporation, places in service in 1999 equipment at a cost of $100,000 and uses this equipment from 1999 through 2003 primarily in its *A* business. *X* depreciates the equipment for 1999 through 2003 under the general depreciation system as 7-year property by using the 200-percent declining balance method (which switched to the straight-line method in 2003), a 7-year recovery period, and a half-year convention. Beginning in 2004, *X* primarily uses the equipment in its *B* business. As a result, the classification of the equipment under section 168(e) changes from 7-year property to 5-year property and the recovery period of the equipment under the general depreciation system changes from 7 years to 5 years. The depreciation method does not change. On January 1, 2004, the adjusted depreciable basis of the equipment is $22,311. *X* depreciates its 5-year recovery property placed in service in 2004 under the general depreciation system by using the 200-percent declining balance method and a 5-year recovery period. *X* does not use the optional depreciation tables.

(ii) Under paragraph (d)(3)(i) of this section, *X*'s allowable depreciation deduction for the equipment for 2004 and subsequent taxable years is determined as though *X* placed the equipment in service in 2004 for use primarily in its *B* business. The depreciable basis of the equipment as of January 1, 2004, is $22,311 (the adjusted depreciable basis at January 1, 2004). Because *X* does not use the optional depreciation tables, the depreciation allowance for 2004 (the deemed placed-in-service year) for this equipment only is computed without taking into account the half-year convention. Pursuant to paragraph (d)(3)(i)(C) of this section, this equipment is not eligible for the additional first year depreciation deduction provided by section 168(k) or section 1400L(b). Thus, *X*'s allowable depreciation deduction for the equipment for 2004 is $8,924 ($22,311 adjusted depreciable basis at January 1, 2004, multiplied by the applicable depreciation rate of 40% (200/5)). *X*'s allowable depreciation deduction for the equipment for 2005 is $5,355 ($13,387 adjusted depreciable basis at January 1, 2005, multiplied by the applicable depreciation rate of 40% (200/5)).

(iii) Alternatively, under paragraph (d)(3)(ii) of this section, *X* may elect to disregard the change in the use and, as a result, may continue to treat the equipment as though it is used primarily in its *A* business. If the election is made, *X*'s allowable depreciation deduction for the equipment for 2004 is $8,924 ($22,311 adjusted depreciable basis at January 1, 2004, multiplied by the applicable depreciation rate of 40% (1/2.5 years remaining at January 1, 2004)). *X*'s allowable depreciation deduction for the equipment for 2005 is $8,925 ($13,387 adjusted depreciable basis at January 1, 2005, multiplied by the applicable depreciation rate of 66.67% (1/1.5 years remaining at January 1, 2005)).

Example 2. Change in the use results in a shorter recovery period and/or a more accelerated depreciation method and optional depreciation table is used—(i) Same facts as in *Example 1*, except that *X* used the optional depreciation tables for computing depreciation for 1999 through 2003. Pursuant to paragraph (d)(5) of this section, *X* chooses to continue to use the optional depreciation table for the equipment. *X* does not make the election provided in paragraph (d)(3)(ii) of this section to disregard the change in use.

(ii) In accordance with paragraph (d)(5)(ii)(A) of this section, *X* must first identify the appropriate optional depreciation table for the equipment. This table is table 1 in Rev. Proc. 87–57 because the equipment will be depreciated in the year of change (2004) under the general depreciation system using the 200-percent declining balance method, a 5-year recovery period, and the half-year convention (which is the convention that applied to the equipment in 1999). Pursuant to paragraph (d)(3)(i)(C) of this section, this equipment is not eligible for the additional first year depreciation deduction provided by section 168(k) or section 1400L(b). For 2004, *X* multiplies its adjusted depreciable basis in the equipment as of January 1, 2004, of $22,311, by the annual depreciation rate in table 1 for recovery year 1 for a 5-year recovery period (.20), to determine the depreciation allowance of $4,462. For 2005, *X* multiplies its adjusted depreciable basis in the equipment as of January 1, 2004, of $22,311, by the annual depreciation rate in table 1 for recovery year 2 for a 5-year recovery period (.32), to determine the depreciation allowance of $7,140.

Example 3. Change in the use results in a longer recovery period and/or a slower depreciation method—(i) *Y*, a calendar-year corporation, places in service in January 2002, equipment at a cost of $100,000 and uses this equipment in 2002 and 2003 only within the United States. *Y* elects not to deduct the additional first year depreciation under section 168(k). *Y* depreciates the equipment for 2002 and 2003 under the general depreciation system by using the 200-percent declining balance method, a 5-year recovery period, and a half-year convention. Beginning in 2004, *Y* uses the equipment predominantly outside the United States. As a result of this change in the use, the equipment is subject to the alternative depreciation system beginning in 2004. Under the alternative depreciation system, the equipment is depreciated by using the straight line method and a 9-year recovery period. The adjusted depreciable basis of the equipment at January 1, 2004, is $48,000.

(ii) Pursuant to paragraph (d)(4) of this section, *Y*'s allowable depreciation deduction for 2004 and subsequent taxable years is determined as though the equipment had been placed in service in January 2002, as property used predominantly outside the United States. Further, pursuant to paragraph (d)(4)(i) of this section, the equipment is not eligible in 2004 for the additional first year depreciation deduction provided by section 168(k) or section 1400L(b). In determining the applicable depreciation rate for 2004, the applicable depreciation method is the straight line method and the applicable recovery period is 7.5 years, which is the number of years remaining at January 1, 2004, for property placed in service in 2002 with a 9-year recovery period (taking into account the half-year convention). Thus, the depreciation allowance for 2004 is $6,398 ($48,000 adjusted depreciable basis at January 1, 2004, multiplied by the applicable depreciation rate of 13.33% (1/7.5 years)).

The depreciation allowance for 2005 is $6,398 ($41,602 adjusted depreciable basis at January 1, 2005, multiplied by the applicable depreciation rate of 15.38% (1/6.5 years remaining at January 1, 2005)).

Example 4. Change in the use results in a longer recovery period and/or a slower depreciation method and optional depreciation table is used—(i) Same facts as in *Example 3*, except that *Y* used the optional depreciation tables for computing depreciation in 2002 and 2003. Pursuant to paragraph (d)(5) of this section, *Y* chooses to continue to use the optional depreciation table for the equipment. Further, pursuant to paragraph (d)(4)(i) of this section, the equipment is not eligible in 2004 for the additional first year depreciation deduction provided by section 168(k) or section 1400L(b).

(ii) In accordance with paragraph (d)(5)(ii)(B) of this section, *Y* must first determine the appropriate optional depreciation table for the equipment pursuant to paragraph (d)(5)(ii)(B)(*1*) of this section. This table is table 8 in Rev. Proc. 87–57, which corresponds to the alternative depreciation system, the straight line method, a 9-year recovery period, and the half-year convention (because *Y* depreciated 5-year property in 2002 using a half-year convention). Next, *Y* must determine the appropriate recovery year in table 8. Because the year of change is 2004, the depreciation allowance for the equipment for 2004 is determined using recovery year 3 of table 8. For 2004, *Y* multiplies its adjusted depreciable basis in the equipment as of January 1, 2004, of $48,000, by the product of the annual depreciation rate in table 8 for recovery year 3 for a 9-year recovery period (.1111) and the transaction coefficient of 1.200 [1/(1 − (.0556 (table 8 for recovery year 1 for a 9-year recovery period) + .1111 (table 8 for recovery year 2 for a 9-year recovery period)))], to determine the depreciation allowance of $6,399. For 2005, *Y* multiplies its adjusted depreciable basis in the equipment as of January 1, 2004, of $48,000, by the product of the annual depreciation rate in table 8 for recovery year 4 for a 9-year recovery period (.1111) and the transaction coefficient (1.200), to determine the depreciation allowance of $6,399.

(e) *Change in the use of MACRS property during the placed-in-service year*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, if a change in the use of MACRS property occurs during the placed-in-service year and the property continues to be MACRS property owned by the same taxpayer, the depreciation allowance for that property for the placed-in-service year is determined by its primary use during that year. The primary use of MACRS property may be determined in any reasonable manner that is consistently applied to the taxpayer's MACRS property. For purposes of this paragraph (e), the determination of whether the mid-quarter convention applies to any MACRS property placed in service during the year of change is made in accordance with § 1.168(d)–1.

(2) *Alternative depreciation system property*—(i) *Property used within and outside the United States.* The depreciation allowance for the placed-in-service year for MACRS property that is used within and outside the United States is determined by its predominant use during that year. The determination of whether MACRS property is used predominantly outside the United States during the placed-in-service year shall be made in accordance with the test in § 1.48–1(g)(1)(i) for determining predominant use.

(ii) *Tax-exempt bond financed property.* The depreciation allowance for the placed-in-service year for MACRS property that changes to tax-exempt bond financed property, as described in section 168(g)(1)(C) and (g)(5), during that taxable year is determined under the alternative depreciation system. For purposes of this paragraph (e), MACRS property changes to tax-exempt bond financed property when a tax-exempt bond is first issued after the MACRS property is placed in service. MACRS property continues to be tax-exempt bond financed property in the hands of the taxpayer even if the tax-exempt bond (including any refunding issue) is not outstanding at, or is redeemed by, the end of the placed-in-service year.

(iii) *Other mandatory alternative depreciation system property.* The depreciation allowance for the placed-in-service year for MACRS property that changes to, or changes from, property described in section 168(g)(1)(B) (tax-exempt use property) or (D) (imported property covered by an Executive order) during that taxable year is determined under—

(A) The alternative depreciation system if the MACRS property is described in section 168(g)(1)(B) or (D) at the end of the placed-in-service year; or

(B) The general depreciation system if the MACRS property is not described in section 168(g)(1)(B) or (D) at the end of the placed-in-service year, unless other provisions of the Internal Revenue Code or regulations under the Internal Revenue Code require the depreciation allowance for that MACRS property to be determined under the alternative depreciation system (for example, section 168(g)(7)).

(3) *Examples.* The application of this paragraph (e) is illustrated by the following examples:

Example 1. (i) *Z,* a utility and calendar-year corporation, acquires and places in service on January 1, 2004, equipment at a cost of $100,000. *Z* uses this equipment in its combustion turbine production plant for 4 months and then uses the equipment in its steam production plant for the remainder of 2004. *Z*'s combustion turbine production plant assets are classified as 15-year property and are depreciated by *Z* under the general depreciation system using a 15-year recovery period and the 150-percent declining balance method of depreciation. *Z*'s steam production plant assets are classified as 20-year property and are depreciated by *Z* under the general depreciation system using a 20-year recovery period and the 150-percent declining balance method of depreciation. *Z* uses the optional depreciation tables. The equipment is 50-percent bonus depreciation property for purposes of section 168(k).

(ii) Pursuant to this paragraph (e), *Z* must determine depreciation based on the primary use of the equipment during the placed-in-service year. *Z* has consistently determined the primary use of all of its MACRS properties by comparing the number of full months in the taxable year during which a MACRS property is used in one manner with the number of full months in that taxable year during which that MACRS property is used in another manner. Applying this approach, *Z* determines the depreciation allowance for the equipment for 2004 is based on the equipment being classified as 20-year property because the equipment was used by *Z* in its steam production plant for 8 months in 2004. If the half-year convention applies in 2004, the appropriate optional depreciation table is table 1 in Rev. Proc. 87–57, which is the table for MACRS property subject to the general depreciation system, the 150-percent declining balance method, a 20-year recovery period, and the half-year convention. Thus, the depreciation allowance for the equipment for 2004 is $51,875, which is the total of $50,000 for the 50-percent additional first year depreciation deduction allowable (the unadjusted depreciable basis of $100,000 multiplied by .50), plus $1,875 for the 2004 depreciation allowance on the remaining adjusted depreciable basis of $50,000 [(the unadjusted depreciable basis of $100,000 less the additional first year depreciation deduction of $50,000) multiplied by the annual depreciation rate of .0375 in table 1 for recovery year 1 for a 20-year recovery period].

Example 2. T, a calendar year corporation, places in service on January 1, 2004, several computers at a total cost of $100,000. *T* uses these computers within the United States for 3 months in 2004 and then moves and uses the computers outside the United States for the remainder of 2004. Pursuant to § 1.48–1(g)(1)(i), the computers are considered as used predominantly outside the United States in 2004. As a result, for 2004, the computers are required to be depreciated under the alternative depreciation system of section 168(g) with a recovery period of 5 years pursuant to section 168(g)(3)(C). *T* uses the optional depreciation tables. If the half-year convention applies in 2004, the appropriate optional depreciation table is table 8 in Rev. Proc. 87–57, which is the table for MACRS property subject to the alternative depreciation system, the straight line method, a 5-year recovery period, and the

half-year convention. Thus, the depreciation allowance for the computers for 2004 is $10,000, which is equal to the unadjusted depreciable basis of $100,000 multiplied by the annual depreciation rate of .10 in table 8 for recovery year 1 for a 5-year recovery period. Because the computers are required to be depreciated under the alternative depreciation system in their placed-in-service year, pursuant to section 168(k)(2)(C)(i) and § 1.168(k)–1T(b)(2)(ii), the computers are not eligible for the additional first year depreciation deduction provided by section 168(k).

(f) *No change in accounting method.* A change in computing the depreciation allowance in the year of change for property subject to this section is not a change in method of accounting under section 446(e). *See* § 1.446–1T(e)(2)(ii)(*d*)(*3*)(*ii*).

(g) *Effective dates*—(1) *In general.* This section applies to any change in the use of MACRS property in a taxable year ending on or after June 17, 2004. For any change in the use of MACRS property after December 31, 1986, in a taxable year ending before June 17, 2004, the Internal Revenue Service will allow any reasonable method of depreciating the property under section 168 in the year of change and the subsequent taxable years that is consistently applied to any property for which the use changes in the hands of the same taxpayer or the taxpayer may choose, on a property-by-property basis, to apply the provisions of this section.

(2) *Change in method of accounting*—(i) *In general.* If a taxpayer adopted a method of accounting for depreciation due to a change in the use of MACRS property in a taxable year ending on or after December 30, 2003, and the method adopted is not in accordance with the method of accounting for depreciation provided in this section, a change to the method of accounting for depreciation provided in this section is a change in the method of accounting to which the provisions of sections 446(e) and 481 and the regulations under sections 446(e) and 481 apply. Also, a revocation of the election provided in paragraph (d)(3)(ii) of this section to disregard a change in the use is a change in method of accounting to which the provisions of sections 446(e) and 481 and the regulations under sections 446(e) and 481 apply. However, if a taxpayer adopted a method of accounting for depreciation due to a change in the use of MACRS property after December 31, 1986, in a taxable year ending before December 30, 2003, and the method adopted is not in accordance with the method of accounting for depreciation provided in this section, the taxpayer may treat the change to the method of accounting for depreciation provided in this section as a change in method of accounting to which the provisions of sections 446(e) and 481 and the regulations under sections 446(e) and 481 apply.

(ii) *Automatic consent to change method of accounting.* A taxpayer changing its method of accounting in accordance with this paragraph (g)(2) must follow the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in method of accounting (for further guidance, for example, *see* Rev. Proc. 2002–9 (2002–1 C.B. 327), as modified by Rev. Proc. 2004–11 (2004–3 I.R.B. 311) (*see* § 601.601(d)(2)(ii)(*b*) of this chapter)). Any change in method of accounting made under this paragraph (g)(2) must be made using an adjustment under section 481(a). For purposes of Form 3115, *Application for Change in Accounting Method,* the designated number for the automatic accounting method change authorized by this paragraph (g)(2) is ''88.'' If Form 3115 is revised or renumbered, any reference in this section to that form is treated as a reference to the revised or renumbered form.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: June 7, 2004.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–053–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Maryland regulatory program (the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Annotated Code of Maryland as contained in House Bill 893. The amendment requires the Department of the Environment to take action for permit applications, permit revisions, and revised applications within certain time periods. The amendment is intended to require the timely review of applications for open-pit mining permits.

DATES: *Effective Date:* June 17, 2004.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (412) 937–2153. Internet: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Maryland Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Maryland program on December 1, 1980. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 1, 1980, **Federal Register** (45 FR 79430). You can also find later actions concerning Maryland's program and program amendments at 30 CFR 920.12, 920.15 and 920.16.

II. Submission of the Proposed Amendment

By letter dated January 7, 2004 (Administrative Record Number MD–586–00), Maryland sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Maryland sent the amendment to include changes made at its own initiative. The amendment consists of Maryland House Bill 893, which was enacted to require the Department of the Environment to review an application for an open-pit mining permit in a timely manner. The bill revises the Annotated Code of Maryland, and requires the Department of the Environment to take action for permit applications, permit revisions, and revised applications within certain time periods.

We announced receipt of the proposed amendment in the March 11, 2004, **Federal Register** (69 FR 11562). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on April 12, 2004. We received responses from two Federal agencies.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

At section 15–505(d)(6), the words ''in a timely manner'' are added to the end of the provision as follows:

(6) The Department shall review all aspects of the application, including information pertaining to any other permit required from the Department for the proposed strip mining operation in a timely manner.

Section 15–505(d)(7) is amended by adding new (7)(i)1., (7)(i)2., (7)(i)2.A., (7)(i)2.B., and (7)(iii). As amended, section 15–505(d)(7) provides as follows:

(7)(i) Upon completion of the review required by paragraph (6) of this subsection, the Department shall grant, require modification of, or deny the application for a permit and notify the applicant and any participant to a public informational hearing, in writing, of its decision:

1. Within 90 days after the date the Department determines that an application for a new permit or an application for permit revision that proposes significant alterations in the permit is complete; or

2. Within 45 days after receiving:

A. A revised application for a new permit; or

B. An application for a permit revision that does not propose significant alterations in the permit.

(ii) The applicant for a permit shall have the burden of establishing that the application is in compliance with all of the requirements of this subtitle and the rules and regulations issued under this subtitle.

(iii) The Department may provide for one extension of the deadlines in subparagraph (i) of this paragraph for up to 30 days by notifying the applicant in writing prior to the expiration of the original deadlines.

We find that these amendments are no less stringent than SMCRA section 510(a). SMCRA section 510(a) provides that, on the basis of a complete mining application and reclamation plan or a revision or renewal thereof, the regulatory authority shall grant, require modification of, or deny the application for a permit in a reasonable time set by the regulatory authority. We find the proposed amendment at 15–505(d)(6), which requires the timely review of all aspects of the application, to be in accordance with and no less stringent than SMCRA section 510(a) and can be approved. In addition, we find that the time limits and requirements at paragraphs 15–505(d)(7)(i)1. and 2., and the possible extension of up to 30 days identified at 15–505(d)(7)(iii) are reasonable and not inconsistent with section 510(a) of SMCRA and can be approved.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Number MD–586–04), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Maryland program (Administrative Record No. MD–586–01). We received a response from the Natural Resources Conservation Service (NRCS) (Administrative Record Number MD–586–03). The NRCS stated that it had no comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the amendments that Maryland proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(ii), we requested comments on the amendment from EPA (Administrative Record Number MD–586–01). By letter dated February 25, 2004, EPA stated that there are no apparent inconsistencies with the Clean Water Act or other statutes under the jurisdiction of EPA (Administrative Record No. MD–586–02).

V. OSM's Decision

Based on the above findings, we are approving the amendment that Maryland forwarded to us on January 7, 2004.

To implement this decision, we are amending the Federal regulations at 30 CFR part 920, which codify decisions concerning the Maryland program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that Maryland's program demonstrate that it has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of Maryland and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations''. Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with''

regulations issued by the Secretary pursuant to SMCRA.

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 rule does not have substantial direct effects 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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian tribes.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

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; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (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. This determination is based upon the fact that the State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 20, 2004.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 920 is amended as set forth below:

PART 920—MARYLAND

■ 1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 920.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* * *	* *
January 7, 2004	June 17, 2004	M.C.A. Section 15–505(d)(6), (d)(7)(i)1., (d)(7)(i)2., (d)(7)(i)2.A., (d)(7)(i)2.B., and (d)(7)(iii).

[FR Doc. 04–13674 Filed 6–16–04; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–101–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are removing a required program amendment from the West Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The required program amendment concerns tree stocking standards for mountaintop removal mining operations with a variance from the requirement to restore the site after mining to approximate original contour (AOC) and with an approved postmining land use of commercial forestry and forestry. The removal of the required amendment is intended to acknowledge actions taken by the State to render the West Virginia program no less effective than the Federal regulations.

DATES: *Effective Date:* June 17, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158, Internet address: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION

I. Background on the West Virginia Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letters dated March 14, 2000, and March 28, 2000, and electronic mail dated April 5, 2000 (Administrative Record Numbers WV–1147, WV–1148, and WV–1149, respectively), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its surface coal mining regulatory program. Among other things, the amendment added new Code of State Regulations (CSR) 38–2–7.4 concerning standards applicable to AOC variance operations with a postmining land use of commercial forestry and forestry. CSR 38–2–7.4.b.1.I sets forth the standards of success for the commercial forestry postmining land use. We announced our approval of CSR 38–2–7.4, with an exception noted below, on August 18, 2000 (65 FR 50409) (Administrative Record Number WV–1174).

In our August 18, 2000, **Federal Register** notice, we did not approve the new tree stocking standards for commercial forestry and forestry postmining land use, because there was no evidence that the West Virginia Division of Forestry had reviewed and approved the proposed standards as is required by the Federal regulations at 30 CFR 816.116(b)(3)(i) (65 FR at 50422). Therefore, we required that the WVDEP consult with and obtain the approval of the Division of Forestry on the new stocking standards for commercial forestry and forestry at CSR 38–2–7.4.b.1.I. We codified this requirement in the Federal regulations at 30 CFR 948.16(aaaaa).

Under the Federal regulations at 30 CFR 816.116(b)(3)(i), the approval of the stocking standards may be on a program-wide or permit-specific basis. Since a program-wide approval had not yet been granted by the Division of Forestry at the time of our August 18, 2000, decision, we determined that the WVDEP must obtain approval on a permit-specific basis until such time that it received program-wide approval by the Division of Forestry.

By letter dated February 26, 2002, (Administrative Record Number WV–1276), the WVDEP, Division of Mining and Reclamation submitted, among other materials, a letter dated November 17, 2000, from the Division of Forestry to the WVDEP. In that letter, the Division of Forestry approved, on a statewide basis, the stocking rates at CSR 38–2–7.4, concerning standards applicable to mountaintop removal mining operations with a postmining land use of commercial forestry and forestry.

The November 17, 2000, letter from the Division of Forestry to the WVDEP appeared to satisfy the required program amendment codified in the Federal regulations at 30 CFR 948.16(aaaaa). Therefore, in the March 25, 2004, **Federal Register**, we proposed to remove the required program amendment at 30 CFR 948.16(aaaaa) from the West Virginia program (69 FR 15275). In the same document, we opened the public comment and provided an opportunity for a public hearing or meeting on the adequacy of the proposed removal of the required program amendment (Administrative Record Number WV–1387). We did not hold a hearing or a meeting because no one requested one. The public comment period closed on April 26, 2004. We received comments from one individual that are discussed below.

III. OSM's Findings

The required program amendment at 30 CFR 948.16(aaaaa) provides that the WVDEP must ''consult with and obtain the approval of the West Virginia Division of Forestry on the new stocking standards for commercial forestry and forestry at CSR 38–2–7.4.b.1.I.'' As we noted above, by letter dated February 26, 2002, the WVDEP, Division of Mining and Reclamation submitted, among other materials, a letter dated November 17, 2000, from the Division of Forestry to the WVDEP. In that letter, the Division of Forestry approved, on a statewide basis, the stocking rates at CSR 38–2–7.4, concerning success standards applicable to mountaintop removal mining operations with a postmining land use of commercial forestry and forestry.

As required by the Federal regulations at 30 CFR 948.116(b)(3)(i), the WVDEP has established minimum statewide stocking rates at CSR 38–2–7.4.b.1.I on the basis of local and regional conditions and after consultation with and the approval by the West Virginia Division of Forestry. Therefore, we find that the November 17, 2000, letter from the Division of Forestry to the WVDEP, Division of Mining and Reclamation

satisfies the required program amendment at 30 CFR 948.16(aaaaa), which can be removed.

We did not approve the tree stocking standards for commercial forestry and forestry postmining land use at CSR 38–2–7.4.b.1.I. in our August 18, 2000, decision because there was no evidence that the West Virginia Division of Forestry had reviewed and approved the proposed standards as is required by the Federal regulations at 30 CFR 816.116(b)(3)(i). Consequently, we prohibited the WVDEP from implementing those standards until the required amendment at 30 CFR 948.16(aaaaa) had been satisfied. That is, we only needed the Division of Forestry's concurrence to find the standards at CSR 38–2–7.4.b.1.I. to be consistent with the Federal regulations at 30 CFR 816.116(b)(3). Because the concurrence of the Division of Forestry has been received and the required program amendment at 30 CFR 948.16(aaaaa) has been satisfied, we are approving the stocking rates at CSR 38–2–7.4.b.1.I. These standards can now be implemented on a statewide basis.

IV. Summary and Disposition of Comments

Public Comments

One comment was received in response to our request for comments from the public on the proposed removal of the required program amendment at 30 CFR 948.16(aaaaa) (*see* section II of this preamble). The commenter requested that the proposed rule to remove the required amendment at 30 CFR 948.16(aaaaa) be re-posted, because it was not clear exactly what was being proposed (Administrative Record Number WV–1393).

We disagree with the comment that the proposed rule notice published on March 25, 2004, is unclear. We believe that the proposed rule notice adequately describes the fact that we proposed to remove the required program amendment codified in the Federal regulations at 30 CFR 948.16(aaaaa) because the State submitted a letter that satisfies the required amendment.

In the March 25, 2004, proposed notice, we stated that ''we required that the WVDEP consult with and obtain the approval of the Division of Forestry on the new stocking standards for commercial forestry and forestry at CSR 38–2–7.4.b.1.I.'' We further stated that ''[w]e codified this requirement in the Federal regulations at 30 CFR 948.16(aaaaa).'' Also in the March 25, 2004, notice, we proposed to remove the required amendment at 30 CFR 948.16(aaaaa) because, we said, ''it appears that the November 17, 2000, letter from the Division of Forestry to the WVDEP satisfies the required program amendment at 30 CFR 948.16(aaaaa).''

We also explained that the WVDEP, Division of Mining and Reclamation had submitted on February 26, 2002, a letter to us dated November 17, 2000, from the Division of Forestry to the WVDEP. In that letter, the Division of Forestry approved, on a statewide basis, the stocking rates at CSR 38–2–7.4, concerning standards applicable to mountaintop removal mining operations with a postmining land use of commercial forestry and forestry. We believe that we have adequately explained the purpose of the March 25, 2004, proposed rule notice and our proposed intent to remove the required program amendment codified at 30 CFR 948.16(aaaaa). Therefore, we maintain that the notice in question does not need to be re-posted.

The commenter also stated that it was clear that mountaintop removal mining is causing environmental damage, and OSM has been lax and negligent in allowing this environmental damage to continue. In response, we believe that the State's adoption of the stocking standards for commercial forestry and forestry at CSR 38–2–7.4.b.1.I. will help ensure that mountaintop removal mining activities in the State will comply with the State requirements that are specifically authorized under SMCRA.

We note that we received comments from the West Virginia Coal Association on the State's program amendments dated February 26, and a related submittal dated March 8, 2002, but none of the comments specifically addressed the stocking standards for commercial forestry and forestry at CSR 38–2–7.4.b.1.I., that were the subject of the required program amendment codified at 30 CFR 948.16(aaaaa).

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on March 11, 2002, we requested comments on the State's February 26 and March 8, 2002, amendments from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Number WV–1284). We received comments from three Federal agencies which included the U.S. Army Corps of Engineers, the National Park Service, and the U.S. Environmental Protection Agency. However, none of the comments that we received from the National Park Service or the U.S. Army Corps of Engineers pertained to the State's stocking standards for mountaintop removal mining operations with a postmining land use of commercial forestry and forestry (Administrative Record Numbers WV–1289 and WV–1291). We did not specifically ask for Federal agency comments on the proposed removal of 30 CFR 948.16(aaaaa).

Environmental Protection Agency (EPA) Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

By letter dated March 11, 2002, we requested comments and the concurrence from EPA with regard to the State program amendments of February 26 and March 8, 2002, which included the Division of Forestry's concurrence on the State's proposed stocking standards for commercial forestry and forestry (Administrative Record Number WV–1283).

On April 10, 2002, EPA commented and provided its concurrence on the proposed State program amendments of February 26 and March 8, 2002 (Administrative Record Number WV–1294). Because the proposed removal of the required amendment at 30 CFR 948.16(aaaaa) did not pertain to air or water quality standards, we did not ask EPA for its concurrence on the proposed removal of that required amendment after we announced our proposed rule in the **Federal Register** on March 25, 2004 (Administrative Record Number WV–1387). None of the earlier comments provided us by EPA pertained to the stocking standards for mountaintop removal mining operations with a postmining land use of commercial forestry and forestry.

V. OSM's Decision

Based on the above findings, we are removing the required program amendment codified at 30 CFR 948.16(aaaaa) and we are approving the stocking standards for commercial forestry and forestry at CSR 38–2–7.4.b.1.I.

To implement this decision, we are amending the Federal regulations at 30 CFR part 948, which codify decisions concerning the West Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the

provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

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 rule does not have substantial direct effects 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. The basis for this determination is our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

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; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (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. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 14, 2004.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

■ 1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 948.15 is amended by adding a new entry to the table in chronological order by ''Date of publication of final rule'' to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of publication of final rule	Citation/description
* * *	* * *	*
March 14, 2000, March 28, 2000, and April 5, 2000	June 17, 2004	CSR 38–2–7.4.b.1.l.

§ 948.16 [Amended]

■ 3. Section 948.16 is amended by removing and reserving paragraph (aaaaa).

[FR Doc. 04–13673 Filed 6–16–04; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–04–010]

RIN 1625–AA09

Drawbridge Operation Regulations; Palm Beach County Bridges, Atlantic Intracoastal Waterway, Palm Beach County, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulations of most of the Palm Beach County bridges across the Atlantic Intracoastal Waterway, Palm Beach County, Florida. The schedule will meet the reasonable needs of navigation while accommodating increased vehicular traffic flow throughout the county. This rule will require these bridges to open twice an hour with the Boca Club, Camino Real bridge opening three times per hour.

DATES: This rule is effective July 19, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–04–010] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Bridge Branch (obr), Seventh Coast Guard District, maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Manager, Seventh Coast Guard District, Bridge Branch, (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 10, 2004, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled Drawbridge Operation Regulations; Palm Beach County Bridges, Atlantic Intracoastal Waterway, Palm Beach County, Florida, in the **Federal Register** (68 FR 11351). We received 733 comments on this NPRM. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard performed a 90-day test of the proposed schedule on the Palm Beach County bridges in the spring of 2003 that was published in the **Federal Register**, March 19, 2003, (68 FR 13227) (CGD07–03–031). The purpose of the test was to collect data to determine the feasibility of changing the regulations on most of the bridges in Palm Beach County to meet the increased demands of vehicular traffic but still provide for the reasonable needs of navigation. The test results indicated that the proposed schedule would improve vehicular traffic flow while still meeting the reasonable needs of navigation. During the test period, vessel requests for openings remained at or below an average of two per hour with the exception of Camino Real bridge. A computer modeling of that bridge prescribed an opening schedule of three times per hour as optimal for a combination of vehicular and vessel traffic. The schedule allowed both vehicular and vessel traffic the opportunity to predict, on a scheduled basis, when the bridges would possibly be in the open position.

In light of the test period and follow-on computer modeling, the Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** on March 10, 2004 (69 FR 11351) (CGD07–04–010) delineating this proposed new schedule. We received 733 comments: one form letter from 440 commentors in favor of the schedules, 1 petition with 131 signatures in favor of the schedules, 145 letters from individual citizens in favor of the schedules, 4 letters from municipalities in favor of the schedules, 8 letters with various recommendations regarding different schedules and 5 letters opposing the new schedules. In addition, we received 52 e-mails with no identifiable names or addresses.

The change in operating regulations was requested by various Palm Beach County public officials to ease vehicular traffic, which has overburdened roadways, and to standardize bridge openings throughout the county for vessel traffic. The rule will allow most of the bridges in Palm Beach County to operate on a standardized schedule, which would meet the reasonable needs of navigation and improve vehicular traffic movement. The rule will provide for staggered schedules in order to facilitate the movement of vessels from bridge to bridge along the Atlantic Intracoastal Waterway.

Discussion of Comments and Changes

We received 733 comments on the NPRM: 720 were in favor of the proposed rule, 5 were against and 8 had alternative recommendations. Two commentors recommended that the schedule for Linton Boulevard and NE. 8th Street (George Bush) be altered slightly to improve vessel traffic without impacting vehicular traffic. This recommendation was incorporated into the rule. One municipality requested an exemption for commercial vessels in their city and in a neighboring city. Tugs with tows will be exempt from this rule.

There were 440 form letters in favor of the rule which recommended a morning and afternoon curfew period. Two of the comments from municipalities requested additional curfew periods in their cities. The comments regarding morning and afternoon curfew periods were not able to be incorporated into this rule. The previous test period and extensive study disclosed that the bridges in question opened less than twice an hour and that closing the bridges for an hour unnecessarily restricts vessel traffic. As a result, the schedule is set for a constant twenty-four hours a day, every day of the week.

Regulatory Evaluation

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

the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The rule affects vessel traffic through these bridges only in that vessels will need to time their passage through these bridges.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The rule affects all vessel traffic through these bridges. Vessels will need to time their passage through these bridges to meet the twice an hour openings and the twenty-minute schedule of the Camino Real bridge.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard offered small businesses, organizations, or governmental jurisdictions that believed the rule would affect them, or that had questions concerning its provisions or options for compliance, to contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. In § 117.261 add paragraphs (q), (y), (z–1), (z–2) and (z–3); revise paragraphs (r) through (x), (aa) and (aa–1); and remove and reserve paragraph (z) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(q) *Indiantown Road bridge, mile 1006.2.* The draw shall open on the hour and half-hour.

(r) *Donald Ross bridge, mile 1009.3, at North Palm Beach.* The draw shall open on the hour and half-hour.

(s) *PGA Boulevard bridge, mile 1012.6, at North Palm Beach.* The draw shall open on the hour and half-hour.

(t) *Parker (US–1) bridge, mile 1013.7, at Riviera Beach.* The draw shall open on the quarter and three-quarter hour.

(u) *Flagler Memorial (SR A1A) bridge, mile 1020.8, at Palm Beach.* The draw shall open on the quarter and three-quarter hour.

(v) *Royal Park (SR 704) bridge, mile 1022.6, at Palm Beach.* The draw shall open on the hour and half-hour.

(w) *Southern Boulevard (SR 700/80) bridge, mile 1024.7, at Palm Beach.* The draw shall open on the hour and half-hour.

(x) *Ocean Avenue bridge, mile 1031.0, at Lantana.* The draw shall open on the hour and half-hour.

(y) *Ocean Avenue bridge, mile 1035.0, at Boynton Beach.* The draw shall open on the hour and half-hour.

(z) *[Reserved]*

(z–1) *Atlantic Avenue (SR 806) bridge, mile 1039.6, at Delray Beach.* The draw shall open on the quarter and three-quarter-hour.

(z–2) *Linton Boulevard bridge, mile 1041.1, at Delray Beach.* The draw shall open on the hour and half-hour.

(z–3) *Spanish River bridge, mile 1044.9, at Boca Raton.* The draw shall open on the hour and half-hour.

(aa) *Palmetto Park bridge, mile 1047.5, at Boca Raton.* The draw shall open on the hour and half-hour.

(aa–1) *Boca Club, Camino Real bridge, mile 1048.2, at Boca Raton.* The draw shall open on the hour, twenty minutes past the hour and forty minutes past the hour.

* * * * *

Dated: June 4, 2004.

Harvey E. Johnson, Jr.,

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

[FR Doc. 04–13608 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[CGD08–04–004]

RIN 1625–AA84

Safety Zone; Outer Continental Shelf Facility in the Gulf of Mexico for Green Canyon 608

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone around a petroleum and gas production facility in Green Canyon 608 of the Outer Continental Shelf in the Gulf of Mexico. The facility needs to be protected from vessels operating outside the normal shipping channels and fairways, and placing a safety zone around this area would significantly reduce the threat of allisions, oil spills and releases of natural gas. This rule prohibits all vessels from entering or remaining in the specified area around the facility's location except for the following: An attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander.

DATES: This final rule is effective July 19, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD08–04–004] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 500 Poydras Street, New Orleans, LA, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Kevin Lynn, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 15, 2004, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone; Outer Continental Shelf Facility in the Gulf of Mexico for Green Canyon 608'' in the **Federal Register** (69 FR 12098). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard is establishing a safety zone around the Marco Polo Tension Leg Platform (the Platform), a petroleum and gas production facility in the Gulf of Mexico. The Platform is located in Green Canyon (GC 608), at position 27°21′43.32″ N, 90°10′53.01″ W.

This safety zone is in the deepwater area of the Gulf of Mexico. For the purposes of this regulation it is considered to be in waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. Navigation in the area of the safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area of the Gulf of Mexico also includes an extensive system of fairways. The fairway nearest the safety zone is the South of Gulf Safety Fairway. Significant amounts of vessel traffic occur in or near the various fairways in the deepwater area.

Anadarko Petroleum Corporation, hereafter referred to as Anadarko, requested that the Coast Guard establish a safety zone in the Gulf of Mexico around the Marco Polo Tension Leg Platform (TLP).

The request for the safety zone was made due to the high level of shipping activity around the site of the facility, high levels of production volumes, the number of persons onboard the Platform, and environmental safety concerns. Anadarko indicated that the location, production level, and personnel levels on board the facility make it highly likely that any allision with the facility would result in a catastrophic event.

The Coast Guard has evaluated Anadarko's information and concerns against Eighth Coast Guard District criteria developed to determine if an Outer Continental Shelf facility qualifies for a safety zone. Several factors were considered to determine the necessity of a safety zone for the Marco Polo TLP facility: (1) The facility is located approximately 35 nautical miles south-southwest of the South of Gulf Safety Fairway; (2) the facility has a high daily production capacity of petroleum oil and gas; (3) the facility is manned; and (4) the facility is a tension leg platform.

We conclude that the risk of allision to the facility and the potential for loss of life and damage to the environment resulting from such an accident warrants the establishment of this safety zone. This regulation will significantly reduce the threat of allisions, oil spills and natural gas releases and increases the safety of life, property, and the environment in the Gulf of Mexico. This regulation is issued pursuant to 14 U.S.C. 85 and 43 U.S.C. 1333 as set out in the authority citation for 33 CFR part 147.

Discussion of Comments and Changes

We received no comments on the proposed rule. Therefore, we have not made any change in the final rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs

and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. The impacts on routine navigation are expected to be minimal because the safety zone will not overlap any of the safety fairways within the Gulf of Mexico.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Since the Platform is located far offshore, few privately owned fishing vessels and recreational boats/yachts operate in the area. This rule will not impact an attending vessel or vessels less than 100 feet in length overall not engaged in towing. Alternate routes are available for all other vessels impacted by this rule. Use of an alternate route may cause a vessel to incur a delay of four to ten minutes in arriving at their destinations depending on how fast the vessel is traveling. Therefore, the Coast Guard expects the impact of this regulation on small entities to be minimal.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and to what degree this rule would economically affect it.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

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

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.837 to read as follows:

§ 147.837 Marco Polo Tension Leg Platform Safety Zone.

(a) *Description.* Marco Polo Tension Leg Platform, Green Canyon 608 (GC 608), located at position 27°21′43.32″ N, 90°10′53.01″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone. These coordinates are based upon [NAD 83].

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: June 4, 2004.

R.F. Duncan,

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

[FR Doc. 04–13601 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 181

[USCG–2003–14272]

[RIN 1625-AA53]

Country of Origin Codes and Revision of Regulations on Hull Identification Numbers

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising its regulations to allow U.S. manufacturers of recreational boats to display a 2-character country of origin code before the 12-character hull identification number (HIN) without separating the two by means of borders or on a separate label. This removal of our previous restriction will allow U.S. manufactures to comply with the International Organization for Standardization (ISO) HIN standard, without changing the information collected by States on undocumented vessels that they register because the U.S. HIN remains only 12 characters.

DATES: This final rule is effective August 16, 2004.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2003–14272 and are available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call Mr. Alston Colihan, Office of Boating Safety, Coast Guard, telephone 202–267–0984. If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Regulatory History

On June 20, 2003, we published in the **Federal Register** (68 FR 36957) a notice of proposed rulemaking (NPRM) entitled ''Country of Origin Codes and Revision of Regulations on Hull Identification Numbers.'' We received six letters commenting on the proposed rule. No public hearing was requested and none was held.

Background and Purpose

In 1995, the International Organization for Standardization (ISO) finalized a hull identification number standard (ISO 10087:1995(E)) consisting of the existing Coast Guard 12-character HIN format preceded by a 2-character country code and a hyphen. Boat manufacturers in the United States that export to Europe started using the ISO HIN standard beginning with the 1996 model year.

The ISO standard states that ''A HIN shall consist of 14 consecutive characters plus a hyphen * * *'' But 33 CFR 181.27 of our HIN standard states, ''If additional information is displayed on the boat within two inches of the [12-character] hull identification number, that information must be separated from the hull identification number by means of borders or must be on a separate label so that it will not be interpreted as part of the hull identification number.'' While the ISO HIN standard includes a paragraph, ISO 10087:1995(E)(6) entitled ''Additional information,'' that contains language nearly identical to that in § 181.27, the ISO additional information requirements do not apply to the country code and hyphen, which are part of the 14-character, international HIN.

The American Boat and Yacht Council (ABYC) develops voluntary consensus safety standards for the design, construction, equipage, maintenance, and repair of small craft. An ABYC Technical Committee studying the ISO HIN standard and our HIN standard concluded that the differing requirements are a problem for U.S. builders exporting to Europe. One large U.S. manufacturer that exports to Europe pointed out that use of a separate tape to create the border required by our HIN standard often results in misalignment and other flaws that may be confused with attempts to alter an HIN.

This proposal was discussed at the October 29, 2001 meeting of the National Boating Safety Advisory Council (66 FR 49445, September 27, 2001) and there were no objections stated by State boating law administrators in attendance at the meeting. The NBSAC passed a resolution requesting the Coast Guard to immediately pursue rulemaking for an exception to current regulations to allow the U.S. HIN system to conform to the ISO HIN standard while not requiring the states to include the country code in their registration process.

Discussion of Comments

By the close of the comment period on September 18, 2003, we received six comments from the following categories: one individual, one State boating official, one boat manufacturer, and three associations.

Rule Beneficial to Import-Export Community

The individual supported the rule because it removes the limitations of the separate label requirement and will be beneficial to the import-export community.

The boat manufacturer supported the rule because separation of the 2-character country of origin code from the HIN by means of borders or on a separate label is burdensome and costly due to the necessity to maintain two different HIN labeling systems: One for boats sold domestically and a second one for boats exported for sale overseas. Removal of the requirement for borders or a separate label around the country of origin code will allow U.S. manufacturers to comply with the ISO HIN standard, without changing the information collected by the States on undocumented vessels they register.

This manufacturer stated that one of the challenges the company faces as an exporter is being cost-effective while

maintaining compliance with regulations in different countries or regions. The more the company can streamline production to meet global market standards, according to the manufacturer, the greater the company's effectiveness as global marketing competitors. As these views are consistent with our proposed rule, we made no changes in the rule based on these two comments.

Importance of Manufacturers and State Officials Being Aware That Country of Origin Codes Are Not Part of U.S. HINs

The State boating official was not opposed to the hyphen between the country of origin and the HIN. According to the official, one issue that may arise would be the entering of stolen boats into State and National Crime Information systems. If the country of origin is included as part of the HIN on a theft entry, that entry would not produce a ''hit'' if someone looking to see if a vessel was stolen simply uses the 12-digit HIN which does not include a country code. Therefore, the official suggests that it be made clear to manufacturers and state titling authorities that manufacturer's statements of origin and state titles only include the 12-digit HIN.

The Coast Guard agrees. Consistent with the NBSAC resolution, our rule brings the U.S. HIN system into conformity to the ISO HIN standard and does not require the states to include the country code in their registration process. The manufacturer's statements of origin and state titles are State paperwork and ownership issues. Publication of the state official's concerns here in the **Federal Register**, however, should help ensure that manufacturers and State officials take note of this concern. In addition, we are revising our final rule to expressly include a reference in § 181.27, that the HIN is 12 characters long.

Advocates for Changing to 17-Character HIN

An association representing auto theft investigators opposed the proposed rule, because, according to the association, the addition of two new HIN characters would only serve to complicate and confuse the law enforcement and insurance communities, as well as various state registration departments and the general public. Also according to the comment, any HIN modification should result in the adoption of a 17-character HIN format as approved and submitted to the Coast Guard by the association representing auto theft investigators, the American Boat and Yacht Council (ABYC) and the National Association of State Boating Law Administrators (NASBLA).

Since the Coast Guard published the HIN regulations in 1972, boat manufacturers have had the option of including additional characters near the HIN, provided the additional characters were distinctly separate—by a hyphen from 1972 to 1984 and by means of borders or on a separate label from August 1, 1984 (48 FR 40716, September 9, 1983) to the present. United States manufacturers exporting overseas have been using the ISO HIN standards since 1996. In addition, the 17-character HIN format to which the comment refers is beyond the scope of this rulemaking.

An association representing State Boating Law Administrators as well as an association representing investigators of boat thefts also opposed the proposed rule and instead, supported adoption of the 17-character HIN format. Again, U.S. manufacturers exporting overseas have been using the ISO HIN standards since 1996; however, they have had to separate the country of origin code from the 12-character HIN by means of borders or with a separate label. This rule simply makes the U.S. HIN regulations more compatible with the ISO HIN Standard. In addition, the 17-character HIN format to which the associations refer is beyond the scope of this rulemaking that does not call for States to adjust for the addition of any characters to the HIN.

All three associations indicated we were creating a 14-character HIN. We are not. The country of origin code is separated by a hyphen and is not part of the U.S. HIN. As noted above, we have revised our final rule to reflect that our HIN remains 12 characters.

Discussion of Rule

We did not change the final rule from the rule we proposed in 2003 (68 FR 36957, June 20, 2003) with the exception of inserting a reference to the length of the HIN, 12 characters, in § 181.27. This final rule will relieve manufacturers of recreational boats who sell both internationally and domestically of the burden of the requirement to separate the country of origin code for the United States, ''U.S.–'', from the 12-character HIN by means of borders or a separate label. Any other information would still have to be separated from the 12-character HIN by means of borders or a separate label.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Allowing manufacturers following the ISO HIN format to separate the country of origin code without the use of borders or a separate label would relieve a burden and thereby reduce the costs of complying with the HIN display requirement.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Small Business Administration (SBA) has size standards for each industry and has established codes under the North American Industry Classification System (NAICS). Each NAICS code identifies an industry, and has a corresponding revenue- or employee-based small business size standard. The only type of small entity that this rule would affect would be small businesses.

There were 4,420 U.S. manufacturers of recreational boats in 2002, an estimated 80 percent of which qualify as small businesses by the size standards of the SBA. However, we have observed that the businesses we have identified as small manufacture fewer numbers of boats than their larger competitors. In addition, most of the businesses we have identified as small do not export to the European market and therefore would not follow the ISO HIN format.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we have offered to assist small entities in understanding this final rule so that they can better evaluate its effect on

them and participate in the rulemaking. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Alston Colihan, Project Manager, Office of Boating Safety, by telephone at (202) 267–0984 or by e-mail at *acolihan@comdt.uscg.mil.*

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(d), of the Instruction, from further environmental documentation. The proposed rule to remove the requirement to separate the 2-character country of origin code from the 12-character HIN by means of borders or on a separate label relates to the documentation of vessels and is not expected to have any environmental impact. An ''Environmental Analysis Checklist'' and a ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 181

Labeling, Marine safety, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 181 as follows:

PART 181—MANUFACTURER REQUIREMENTS

■ 1. The authority citation for part 181 is revised to read as follows:

Authority: 46 U.S.C. 4302.

■ 2. Revise § 181.27 to read as follows:

§ 181.27 Information displayed near hull identification number.

With the exception of the characters ''US-'', which constitute the country of origin code for the United States, if information is displayed on the boat within 2 inches of the 12-character hull identification number (HIN), that information must be separated from the HIN by means of borders or must be on a separate label, so that it will not be interpreted as part of the hull identification number.

Dated: May 10, 2004.

David S. Belz,

Rear Admiral, U.S. Coast Guard, Director of Operations.

[FR Doc. 04–13609 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2003–FL–0001–200414(f); FRL–7773–8]

Approval and Promulgation of Implementation Plans: Florida Broward County Aviation Department Variance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing approval of revisions to the State Implementation Plan (SIP) submitted by the State of Florida for the purpose of a department order granting a variance from Rule 62–252.400 to the Broward County Aviation Department. This final rule addresses comments submitted in response to EPA's direct final rule published previously for this action.

DATES: *Effective Date:* This rule will be effective July 19, 2004.

ADDRESSES: Copies of documents relevant to this action are available for

public inspection during normal business hours at: Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Or, by going to the Regional Material in EDocket index at *http://docket.epa.gov/rmepub/* and doing a quick search on ''R04–0AR–2003–FL–0001.''

FOR FURTHER INFORMATION CONTACT:

Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 6, 2004, EPA simultaneously published a proposed rule (69 FR 18006) and a direct final rule (69 FR 17929) to approve a department order granting a variance from Rule 62–252.400 to the Broward County Aviation Department. The Florida Administrative Code (F.A.C.) Rule 62–252.400, requires Stage II vapor recovery systems for all gasoline dispensing facilities located in Broward, Dade, and Palm Beach counties which commence construction or undertake a significant modification after November 15, 1992, prior to dispensing 10,000 gallons or more in any one month. The purpose of the Stage II vapor recovery requirement in Rule 62–252.400, F.A.C. is to recover 95% by weight of vapors displaced from a vehicular fuel tank during refueling.

On April 22, 2003, Broward County Aviation Department submitted a petition for variance from the requirements of Rule 62–252.400, F.A.C. for a proposed consolidated rental car facility fueling area at the Ft. Lauderdale-Hollywood International Airport. The petitioner has estimated that 100% of the vehicles to be refueled at the consolidated rental car facility fueling area will be new vehicles equipped with on-board refueling vapor recovery (ORVR) technologies. The design recovery efficiency of installed ORVR systems is 95%. Further, the petitioner estimates the cost of installation of Stage II vapor recovery will be $250,000 to $370,000 initially with additional cost for maintaining the system. Given the estimated 100% use of the onboard refueling vapor recovery technologies for all vehicles and the high cost of complying with rule 62–252.400 F.A.C., the department has determined that the health and environmental concerns addressed by the underlying statue will be met without Stage II vapor recovery systems. Therefore the department has issued an Order Granting Variance to Broward County Aviation Department, relieving the county from requirements of Rule 62–252.400, F.A.C. Since this rule has previously been approved into Florida's SIP, the department is requesting approval of this variance as a revision to the SIP.

EPA received an adverse comment during the 30-day comment period and therefore withdrew the direct final rule on April 28, 2004 (69 FR 23109).

II. Today's Action

In this final rulemaking, EPA is responding to the adverse comment, and granting final approval to a department order granting a variance from Rule 62–252.400 to the Broward County Aviation Department.

III. Comment and Response

EPA received one adverse comment submitted by a citizen. A summary of the adverse comment and EPA's response is provided below.

Comment: The commenter asserted that we should not fall over backwards in letting aviation industry emit more and more pollution, and that we need to scrutinize carefully and very closely what we allow this industry to do to our air, water and soil. The commenter saw no proof in the proposed SIP approval that these rental cars will be equipped with ORVR controls having 95% control efficiency. The commenter stated that there must be a document in the record proving that this agency owns and uses 100% of these cars and proof that all of these cars capture 95% and meet the standards.''

Response: EPA believes that this revision to the SIP is approvable based on the June 23, 1993, EPA policy memorandum entitled, *Impact of the Recent Onboard Decision on Stage II Requirements in Moderate Nonattainment Areas* which indicates that a Stage II program is not a mandatory requirement for areas classified ''moderate'' or below, upon EPA's promulgation of regulations under section 202(a)(6) of the Clean Air Act for ORVR systems. States were required to adopt Stage II rules for all areas classified as ''moderate'' or worse under section 182(b)(3). However, 202(a)(6) states that ''the requirements of section 182(b)(3) (relating to Stage II gasoline vapor recovery) for areas classified under section 181 as moderate for ozone shall not apply after promulgation of such standards [*i.e.*, onboard controls]* * *'' ORVR regulations were promulgated by EPA on April 6, 1994, (see 59 FR 16262, 40 CFR 86.001 and 40 CFR 86.098) and the requirements of these regulations are currently being phased-in. As a result the Clean Air Act no longer requires moderate areas to impose stage II controls under section 182(b)(3), and such areas may seek SIP revisions to remove such requirements from their SIPs, subject to section 110(l) of the Act.

In this circumstance, EPA does not believe that a determination of ''widespread'' use is necessary to provide for the variance for Stage II requirements for this area or the facility in question. In accordance with the June 23, 1993, EPA policy memorandum, the State has the option to implement a Stage II program in this area, subject to section 110(l), and as such, the State can provide this variance for the consolidated rental car facility. The area is attainment for the 8-hour ozone National Ambient Air Quality Standard, so EPA is able to approve this SIP revision.

IV. Final Action

EPA is granting final approval to the revisions to the Florida SIP described above because they are consistent with EPA guidance and the CAA, as amended in 1990.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 3, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Part 52 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

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

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

Subpart (K)—Florida

■ 2. Section 52.520, is amended by adding a new entry at the end of the table in paragraph (d) for ''Broward County Aviation Department'' to read as follows:

§ 52.520 Identification of plan.

* * * * *

(d) * * *

EPA APPROVED FLORIDA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State effective date	EPA approval date	Explanation
*	*	*	*	*
Broward County Aviation Department.	.....	August 15, 2003	June 17, 2004 [Insert citation of publication].	Order Granting Variance from Rule 62–252.400.

[FR Doc. 04–13682 Filed 6–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–62, GA–64–200418; FRL–7672–4]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On July 18, 2003, EPA published a proposed rule (68 FR 42653) proposing to approve revisions to the State of Georgia's ''Gasoline Marketing Rule'' which were submitted to EPA on January 31, 2003, and June 19, 2003.

Adverse comment was received during the comment period, and this action addresses the adverse comments and grants final approval to the revisions.

DATES: *Effective Date:* This rule will be effective July 19, 2004.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following addresses:

Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International

Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363–7000.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9036. Mr. Martin can also be reached via electronic mail at *martin.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 31, 2003, and June 19, 2003, the Georgia Environmental Protection Division (''GAEPD'') submitted revisions to the ''Gasoline Marketing Rule,'' provided in Georgia's Rules for Air Quality Control, Chapter 391–3–1–.02(2)(bbb) (the ''Georgia Fuel Rule,'') to EPA. The revisions, which are in response to concerns regarding adequate gasoline supply, address the Georgia Fuel Rule's gasoline sulfur requirements, which would have been effective April 1, 2003, and associated reporting and testing requirements. EPA proposed approval of these revisions in a **Federal Register** published on July 18, 2003, (68 FR 42653). Adverse comment was received during the comment period. In today's action, EPA is responding to the adverse comment, and granting final approval to GAEPD's request for a revision to the gasoline sulfur requirement for the period of April 1, 2003, through December 31, 2003.

II. Comment and Response

EPA received comments from the public on the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on July 18, 2003, (68 FR 42653). Comments were submitted by Chevron, Williams Energy, and Collier Shannon Scott on behalf of QuickTrip. Two Commentors expressed support of this proposed rulemaking. The other Commentor, while in favor of the NPRM to revise the State's implementation date from January 1, 2004, to September 16, 2003, expressed concern about the State's original revision of the implementation date from April 1, 2003.

The following discussion summarizes and responds to the adverse comment received.

Comment

By delaying the Georgia Gasoline Marketing Rule's original April 1, 2003 compliance deadline for 30 ppm sulfur gasoline, Georgia delayed significant VOC and NO_X emissions reductions this summer and failed to make ''reasonable further progress'' required under sections 182(c)(2)(B), 182(c)(2)(C) and 182(f) of the Clean Air Act this year. Since most, if not all, VOC and NO_X emission reductions achieved by the Atlanta area nonattainment SIP would have been achieved by the original Georgia fuels rule, the relaxation of the sulfur standard for nine months in 2003 substantially delayed needed emission reductions in the greater Atlanta area. It was technologically achievable to meet 30 ppm sulfur gasoline demand on April 1, 2003, since some companies achieved it. Although Georgia can move back towards the RFP track by accelerating the compliance date to September 16, 2003 (rather than January 1, 2004), any additional delays or relaxations would again threaten Atlanta's ability to meet RFP requirements and should not be allowed under the Clean Air Act.

Response

The emissions reductions in the Atlanta 1-Hour Ozone State Implementation Plan (SIP) are associated with many different sources throughout the 43 counties surrounding and including the nonattainment area. The emission reductions expected from the Georgia Gasoline Marketing Rule are a very small portion of a very large number of reductions expected and achieved in the 2003 ozone season from the controls in the Atlanta SIP. For instance, the majority of the emission reductions are associated with the elevated emissions from power plants. Even though the April 1, 2003, compliance date for the Gasoline Marketing Rule was delayed until September 16, 2003, reasonable further progress was achieved. The Georgia Environmental Protection Division has provided all elements that were required to achieve reasonable further progress, and has implemented many of these measures. EPA believes that revision of the second phase of the Georgia Gasoline Marketing Rule (*i.e.,* requirement for 30 ppm sulfur in gasoline as opposed to 150 ppm (*i.e.,* for Phase 1) or 90 ppm sulfur (*i.e.,* interim requirement beginning April 1, 2003) in gasoline) did not interfere with the section 182(c)(2) RFP requirement.

In addition to the adverse comment mentioned above, Commentors provided EPA with their proposal on enforcement options for all regulated parties that fail to supply the 30 parts per million (ppm) gasoline after September 15, 2003. Some Commentors requested flexibility and case-by-case consideration for the imposition of a per-gallon-fee for noncompliant gasoline, while other Commentors urged EPA to impose a per-gallon-fee for noncompliant gasoline .

In a letter entitled ''Re: Enforcement Discretion—Georgia's Low Sulfur/Low RVP Fuel Program,'' dated April 24, 2003, from John Peter Suarez of EPA's Office of Enforcement and Compliance Assurance to Ron Methier of the Georgia Environmental Protection Division, EPA provides detail of enforcement discretion that could be provided to all regulated parties after September 15, 2003. Specifically, the letter states ''After September 15, 2003, all regulated parties will be required to meet the sulfur requirements of the applicable Georgia regulations, *i.e.,* 30 ppm annual average, and a per-gallon cap of 150 ppm. In the event that a regulated party is unable to supply compliant gasoline to the Atlanta-area market beginning September 16, 2003, and provided that EPA believes additional relief is necessary, EPA will require the non-complying party to enter into a compliance agreement requiring that party to remediate the harmful effects of the excess emissions caused by its gasoline by contributing not less than 7 cents per gallon to an emissions offset program in the affected area as approved by the State of Georgia.''

III. Final Action

EPA is granting final approval to the revisions to the Georgia SIP described above because they are consistent with EPA guidance and the CAA, as amended in 1990.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small

governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 26, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Part 52 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

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

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

Subpart L—Georgia

■ 2. Section 52.570(c), is amended by revising the entry for ''391–3–1–.02(2)(bbb) Gasoline Marketing'' to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
391–3–1–.02(2)(bbb)	Gasoline Marketing	6/24/2003	6/17/2004 [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. 04–13683 Filed 6–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL–7773–5]

RIN 2060–AI90

National Emission Standards for Hazardous Air Pollutants; National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities; National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H; Final Amendment—Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: The Environmental Protection Agency published a final rule amending the National Emission Standards for Hazardous Air Pollutants (NESHAPs), which regulate the air emissions of radionuclides other than radon-222 and radon-220 from facilities owned or operated by the Department of Energy (DOE) and from Federal Facilities other than Nuclear Regulatory Commission (NRC) licensees and not covered by Subpart H. This document contains corrections to the final regulations, which were effective October 9, 2002. After publication in the **Federal Register** it was discovered that the value in table 2 of Method 114 was incorrect.

DATES: *Effective Date:* July 17, 2004.

FOR FURTHER INFORMATION CONTACT: Eleanor Thornton-Jones, Center for Waste Management, Radiation Protection Division, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, Mailstop 6608J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail: *thornton.eleanord@epa.gov* or by phone (202) 343–9773.

SUPPLEMENTARY INFORMATION:

Docket

All documents relevant to this rulemaking have been placed in Docket A–94–60 in EPA's Air Docket. The Air Docket is located at 1200 Pennsylvania Avenue, NW., 20460, in room B–102, Mail Code 6102T and is open between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday. A reasonable fee may be charged for copying.

Background

On September 9, 2002, the Environmental Protection Agency published in the **Federal Register** (65 FR 57159), a final rule amending NESHAPs, which regulate the air emissions of radionuclides other than radon-222 and radon-220 from facilities owned or operated by the Department of Energy (DOE) (Subpart H) and from Federal Facilities other than Nuclear Regulatory Commission (NRC) licensees and not covered by Subpart H (Subpart I). These regulations require that emissions of radionuclides to the ambient air shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 10 millirem per year (mrem/yr). Also, for non-DOE Federal facilities, emissions of iodine shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 3 mrem/yr. Regulated facilities demonstrate compliance with the standard by sampling and monitoring radionuclide emissions from all applicable point sources. Historically, radionuclide emissions from point sources are measured in accordance with the American National Standards Institutes's (ANSI) ''Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities,'' ANSI N13.1–1969. In 1999, the American National Standards Institute substantively revised ANSI N13.1–1969 and renamed it ''Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities,'ANSI/HPS N13.1–1999. In 2002, the Agency updated its regulations at 40 CFR part 61, subparts H and I to require the use of ANSI/HPS N13.1–1999 for all applicable newly constructed or modified facilities and imposed additional inspection requirements on existing facilities consistent with the revised ANSI standard.

Need for Correction

In 40 CFR part 61, Appendix B, Method 114, table 2, under the listing for ''Clean transport lines'' the Frequency of Activity Column states ''Visible deposits for HEPA-filtered applications. Surface density of 1 g/cm^3.'' This should read ''Visible deposits for HEPA-filtered applications. Mean mass of deposited material exceeds 1 g/m^2 for other applications.'' Table 2 used in the Appendix B, Method 114 was orginally from the ANSI Standard (ANSI/HPS N13.1–1999 (Docket No. A–94–60, Item II–D–3)); Section 6.4.6 ''Cleaning transport lines'' explains the value used and the required process involved in cleaning transport lines. This section did not talk in terms of density but in terms of the mass of material deposited.

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Radionuclides, Radon, Reporting and recordkeeping requirements.

Dated: June 7, 2004.

Bonnie C. Gitlin,

Acting Director, Radiation Protection Division.

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

PART 61—[CORRECTED]

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601, and 7602.

■ 2. In Appendix B to part 61, table 2 in Method 114 is amended by revising the entry for ''Clean transport lines'' to read as follows:

Appendix B to Part 61—Test Methods

* * * * *

Method 114—Test Methods for Measuring Radionuclide Emissions From Stationary Sources

* * * * *

4. Quality Assurance Methods

* * * * *

TABLE 2.—MAINTENANCE, CALIBRATION AND FIELD CHECK REQUIREMENTS

Sampling system components	Frequency of activity
Clean transport lines	Visible deposits for HEPA-filtered applications. Mean mass of deposited material exceeds 1g/m^2 for other applications.

* * * * *

[FR Doc. 04–13679 Filed 6–16–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

45 CFR Part 61

RIN 0991–AB31

Health Care Fraud and Abuse Data Collection Program: Technical Revisions to Healthcare Integrity and Protection Data Bank Data Collection Activities

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: The rule makes technical changes to the Healthcare Integrity and Protection Data Bank (HIPDB) data collection reporting requirements set forth in 45 CFR part 61 by clarifying the types of personal numeric identifiers that may be reported to the data bank in connection with adverse actions. Specifically, the rule clarifies that in lieu of a Social Security Number (SSN), an individual taxpayer identification number (ITIN) may be reported to the data bank when, in those limited situations, an individual does not have an SSN.

DATES: *Effective date:* These regulations are effective on July 19, 2004.

Comment date: We will consider comments if we receive them at the appropriate address, as provided in the address section below, no later than 5 p.m. on July 19, 2004.

ADDRESSES: In commenting, please refer to file code OIG–55–FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–55–FC, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

Please allow sufficient time for us to receive mailed comments by the due date in the event of delivery delays. Because access to the Cohen Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the OIG drop box located in the main lobby of the building. For information on viewing public comments, see section IV in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of Management and Policy, (202) 619–0089; or Anne MacArthur, Office of Counsel to the Inspector General, (202) 619–0335.

SUPPLEMENTARY INFORMATION:

I. The Healthcare Integrity and Protection Data Bank (HIPDB)

Section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104–91, required the Department, acting through the Office of Inspector General, to establish a health care fraud and abuse control program to combat health care fraud and abuse (section 1128C of the Social Security Act (the Act)). Among the major steps in this program has been the establishment of a national data bank to receive and disclose certain final adverse actions against health care providers, suppliers, or practitioners, as required by section 1128E of the Act, in accordance with section 221(a) of HIPAA. The data bank, known as the Healthcare Integrity and Protection Data Bank (HIPDB), is designed to collect and disseminate the following types of information regarding final adverse actions: (1) Civil judgments against health care providers, suppliers, or practitioners in Federal or State court that are related to the delivery of a health care item or service; (2) Federal or State criminal convictions against a health care provider, supplier, or practitioner related to the delivery of a health care item or service; (3) final adverse actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, or practitioners; (4) exclusion of a health care provider, supplier, or practitioner from participation in Federal or State health care programs; and (5) any other adjudicated actions or decisions that the Secretary establishes by regulation.

Data Elements To Be Reported to the HIPDB

Section 1128E(b)(2) of the Act cited a number of required elements or types of data that must be reported to the HIPDB. These elements include: (1) The name of the individual or entity; (2) a taxpayer identification number; (3) the name of any affiliated or associated health care entity; (4) the nature of the final adverse action and whether the action is on appeal; (5) a description of the acts or omissions, or injuries, upon which a final adverse action is based; and (6) any other additional information deemed appropriate by the Secretary. With respect to this last element, we have exercised this discretion to add additional reportable data elements reflecting much of the information that is already routinely collected by the Federal and State reporting agencies.

Final regulations implementing the HIPDB were published in the **Federal Register** on October 26, 1999 (64 FR 57740). In those final regulations, for an individual (1) who is the subject of a civil judgment or criminal conviction related to the delivery of a health care item or service; or (2) who is the subject of a licensure action taken by Federal or State licensing and certification agencies, an adjudicated action or decision, or an individual excluded from participation in a Federal or State health care program, the current HIPDB systems of records contains, among other things, the individual's full name, other names used (if known), and his or her SSN. We specifically indicated that use of personal identifiers, such as SSNs and Federal Employer Identification Numbers (FEINs), in the collection and reporting to the HIPDB:

- Provides explicit matching of specific adverse action reports to and from the data bank;
- Provides a greater confidence level in the system's matching algorithm and maximizes the system's ability to prevent the erroneous reporting and disclosure of health care providers, suppliers and practitioners; and
- Strengthens States' ability to detect individuals who move from State to State without disclosure or discovery of previous damaging performance.

However, in addressing the list of ''mandatory'' data elements that must be reported to the data bank in connection with adverse actions, the final regulations inadvertently omitted reference to the reporting of an ITIN to the data bank when, in those limited situations, an individual does not have a SSN.

Tax Identification Numbers as Defined by the Internal Revenue Code

As indicated above, HIPAA requires ''the name and TIN (as defined in section 7701(a)(41) of the Internal Revenue Code (IRC) of 1986) of any health care provider, supplier, or practitioner who is the subject of a final adverse action'' to be reported to the data bank. Section 7701(a)(41) of the IRC does not specifically define TIN, but instead refers to section 6109 of the Code. Section 6109(d) states that an individual's SSN is the tax identifying number for an individual, except as otherwise specified in regulations by the Secretary of the Treasury. In turn, the Department of the Treasury regulations set forth at 26 CFR 301.6109–1(a)(ii)(B) provides for the issuance of an ITIN for individuals who are not eligible for a SSN.

II. Technical Revisions to 45 CFR Part 61

The HIPDB regulations at 45 CFR part 61 currently require the SSN on reports of adverse actions on individuals. Although the SSN meets the statutory requirement of a TIN, we believe that the inclusion of the ITIN, which is also a TIN, is consistent with the statutory requirements of HIPAA. Most reportable final adverse actions are taken against individual health care practitioners who are permitted to work in the United States. Non-citizens in the United States with permission to work are eligible for SSNs. However, we have become aware that there are non-citizens who do not have permission to work in the United States, but who do have ITINs assigned by the Internal Revenue Service (IRS) for tax purposes [1] and hold valid State health care licenses. One example would be a foreign physician who does not practice in the United States, but desires to have a State license as a qualification of his or her ability to practice medicine. We believe that there may be very limited incidences where reportable adverse actions, particularly licensing actions, may be taken against these health care practitioners, such as an adverse licensing action taken by a medical licensing authority in a foreign country that is then reported to a State medical licensing board which then revokes the State medical license of the foreign physician. However, if the physician does not have a SSN, the State medical licensing authority is currently unable to report the action. We believe that the revision of the HIPDB regulations to include the collection of the ITIN for individuals who do not have SSNs, but have been assigned an ITIN, will enable the data bank to receive reports that presently it cannot receive.

As a result, in order to allow for the collection and dissemination of all appropriate information to and from the data bank, we are revising §§ 61.7, 61.8, and 61.10 of the HIPDB regulations at 45 CFR part 61 to indicate that for the reporting of (1) licensure actions taken by Federal and State licensing and certification agencies, (2) Federal or State criminal convictions related to the delivery of a health care item or service, or (3) exclusions from participation in Federal or State health care programs:

- If the subject is an individual, entities must report either the SSN or ITIN;
- If the subject is an organization, entities must report the FEIN, or SSN or ITIN when used by the subject as a TIN; and
- If the subject is an organization, entities should report, if known, any FEINs, SSNs or ITINs used.

These revisions will also allow the reporting of ITINs, by reference, to the reports required in §§ 61.9 and 61.11.

We note that while the inclusion of a SSN or ITIN is a necessary reporting element in reporting adverse actions to the HIPDB, the Social Security Administration and the Internal Revenue Service are not required to assign a SSN or an ITIN, respectively, to those individuals who do not otherwise qualify for such identification numbers.

III. Regulatory Impact Statement

A. Regulatory Analysis

We have examined the impacts of this technical rule revision as required by Executive Order 12866, the Regulatory Flexibility Act (RFA) of 1980, the Unfunded Mandates Reform Act of 1995, and Executive Order 13132.

1. Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects ($100 million or more in any given year). This is not a major rule as defined at 5 U.S.C. 804(2), and it is not economically significant since this technical revision will not have a significant effect on program expenditures and there will be no additional substantive cost through codification of this change. Specifically, the revisions to 45 CFR part 61 set forth in this rule are technical in nature and are designed to further clarify statutory requirements. The economic effect of these revisions will impact only those limited few individuals or organizations that are that subject of an adverse action reportable to the data bank. As such, we believe that the aggregate economic impact of this technical revision to the regulations will be minimal and have no appreciable effect on the economy or on Federal or State expenditures.

2. Regulatory Flexibility Act

The RFA and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most providers are considered to be small entities by having revenues of $6 million to $29 million or less in any one year. For purposes of the RFA, most physicians and suppliers are considered to be small entities. In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural providers. This analysis must conform to the provisions of section 604 of the RFA.

We anticipate that the number of individuals who do not have permission to work in the United States but who have ITINs, who hold valid State health care licenses, and who will be the subject of a report to the HIPDB will be minimal. Even in those very limited incidences where reportable adverse actions, such as licensing actions, may be taken against a health care practitioner, we believe that the aggregate economic impact of this technical revision will be minimal since it is the nature of the conduct and not the size or type of the entity that would result in the violation and the need to report the adverse action to the HIPDB. As a result, we have concluded that this technical rule should not have a

[1] These individuals can use previously IRS assigned ITINs, although they cannot qualify for an ITIN solely for licensing purposes.

significant impact on the operations of a substantial number of small or rural providers, and that a regulatory flexibility analysis is not required for this rulemaking.

3. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. As indicated, these technical revisions comport with statutory intent and clarify the legal authorities for reporting information to the data bank against those who have acted improperly against the Federal and State health care programs. As a result, we believe that there are no significant costs associated with these revisions that would impose any mandates on State, local, or tribal governments, or the private sector that will result in an expenditure of $110 million or more (adjusted for inflation) in any given year, and that a full analysis under the Unfunded Mandates Reform Act is not necessary.

4. Executive Order 13132

Executive Order 13132, Federalism, establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirements or costs on State and local governments, preempts State law, or otherwise has Federalism implications. In reviewing this rule under the threshold criteria of Executive Order 13132, we have determined that this rule will not significantly affect the rights, roles, and responsibilities of State or local governments.

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with Executive Order 12866.

B. Paperwork Reduction Act

The provisions of this rulemaking impose no express new reporting or recordkeeping requirements on reporting entities. As indicated, this additional reportable data element reflects information that is already routinely collected by the Federal and State reporting agencies on health care providers, suppliers and practitioners, and imposes no new reporting burden beyond the data element fields already approved by OMB.

IV. Response to Public Comments

Comments will be available for public inspection beginning on July 6, 2004, in Room 5518 of the Office of Inspector General at 330 Independence Avenue, SW., Washington, DC, on Monday and through Friday of each week from 8 a.m. to 4 p.m., (202) 619–0089. Because of the large number of comments we normally receive on regulations, we cannot acknowledge or respond to comments individually. However, we will consider all timely and appropriate comments when developing any revised final rulemaking.

V. Waiver of Proposed Rulemaking

We ordinarily publish a proposed rule in the **Federal Register** and provide a period for public comment before we publish a final rule. We may waive this procedure, however, for good cause if we find that the notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and if we incorporate a statement of this finding and its reasons in the rule issued. We find it unnecessary to undertake notice and comment rulemaking in this instance because we believe that it is in the public interest to comply with the statutory requirement in section 1128E of the Act that this information be included with respect to subjects of adverse actions reported to the data bank. Therefore, in accordance with MPDIMA and the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(B)), for good cause, we waive notice and comment procedures. We are, however, providing a 30-day public comment period.

List of Subjects in 45 CFR Part 61

Billing and transportation services, Durable medical equipment suppliers and manufacturers, Health care insurers, Health maintenance organizations, Health professions, Home health care agencies, Hospitals, Penalties, Pharmaceutical suppliers and manufacturers, Privacy, Reporting and recordkeeping requirements, Skilled nursing facilities.

■ Accordingly, 45 CFR part 61 is amended to read as follows:

PART 61—HEALTHCARE INTEGRITY AND PROTECTION DATA BANK FOR FINAL ADVERSE INFORMATION ON HEALTH CARE PROVIDERS, SUPPLIERS AND PRACTITIONERS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 1320a–7e.

■ 2. Section 61.7 is amended by republishing the introductory text for paragraphs (b) and (b)(1) and revising paragraph (b)(1)(ii); republishing introductory paragraph (b)(3) and revising paragraph (b)(3)(iii); and by republishing introductory paragraph (c) and (c)(3) and revising paragraph (c)(3)(iii) to read as follows:

§ 61.7 Reporting licensure actions taken by Federal or State licensing and certification agencies.

* * * * *

(b) Entities described in paragraph (a) of this section must report the following information:

(1) If the subject is an individual, personal identifiers, including:

* * * * *

(ii) Social Security Number (or Individual Taxpayer Identification Number (ITIN));

* * * * *

(3) If the subject is an organization, identifiers, including:

* * * * *

(iii) Federal Employer Identification Number (FEIN), or Social Security Number (or ITIN) when used by the subject as a Taxpayer Identification Number (TIN);

* * * * *

(c) Entities described in paragraph (a) of this section should report, if known, the following information:

* * * * *

(3) If the subject is an organization, identifiers, including:

* * * * *

(iii) Other FEIN(s) or Social Security Numbers (or ITIN) used;

* * * * *

■ 3. Section 61.8 is amended by republishing the introductory text for paragraphs (b) and (b)(1) and revising paragraph (b)(1)(ii); republishing introductory paragraph (b)(3) and revising paragraph (b)(3)(iii); and by republishing introductory paragraph (c) and (c)(3) and revising paragraph (c)(3)(iii) to read as follows:

§ 61.8 Reporting Federal or State criminal convictions related to the delivery of a health care item or service.

* * * * *

(b) Entities described in paragraph (a) of this section must report the following information:

(1) If the subject is an individual, personal identifiers, including:

* * * * *

(ii) Social Security Number (or ITIN);

* * * * *

(3) If the subject is an organization, identifiers, including:

* * * * *

(iii) Federal Employer Number (FEIN), or Social Security Number (or ITIN) when used by the subject as a Taxpayer Identification Number (TIN);

* * * * *

(c) Entities described in paragraph (a) of this section should report, if known, the following information:

* * * * *

(3) If the subject is an organization, identifiers, including:

* * * * *

(iii) Other FEIN(s) or Social Security Numbers(s) (or ITINs) used;

* * * * *

■ 4. Section 61.10 is amended by republishing the introductory text for paragraphs (b) and (b)(1) and revising paragraph (b)(1)(ii); republishing introductory paragraph (b)(3) and revising paragraph (b)(3)(iii); and by republishing introductory paragraph (c) and (c)(3) and revising paragraph (c)(3)(iii) to read as follows:

§ 61.10 Reporting exclusions from participation in Federal or State health care programs.

* * * * *

(b) Entities described in paragraph (a) of this section must report the following information:

(1) If the subject is an individual, personal identifiers, including:

* * * * *

(ii) Social Security Number (or ITIN);

* * * * *

(3) If the subject is an organization, identifiers, including:

* * * * *

(iii) Federal Employer Identification Number (FEIN), or Social Security Number (or ITIN) when used by the subject as a Taxpayer Identification Number (TIN);

* * * * *

(c) Entities described in paragraph (a) of this section should report, if known, the following information:

* * * * *

(3) If the subject is an organization, identifiers, including:

* * * * *

(iii) Other FEIN(s) or Social Security Numbers(s) (or ITINs) used;

* * * * *

Dated: April 1, 2004.

Dara Corrigan,

Acting Principal Deputy Inspector General.

Approved: April 19, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–13675 Filed 6–16–04; 8:45 am]

BILLING CODE 4152–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[ET Docket No. 01–75; FCC 04–104]

Revision of Broadcast Auxiliary Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of application for review of decision.

SUMMARY: This document addresses the application for review filed by the Society of Broadcast Engineers, Inc. The Application responds to the denial of SBE's request for a second stay of the rules for coordination of fixed aural and video stations in the Broadcast Auxiliary Service (BAS) adopted in the *Report and Order*. The Commission affirms the Office of Engineering and Technology's (OET) *Order* (*Denial Order*) denying SBE's request (Second Request) seeking an additional six-month stay of the effective date of those rules. The Commission agrees with OET's determination that an additional stay of the BAS coordination rules is not in the public interest. The Commission denies SBE's application for review.

FOR FURTHER INFORMATION CONTACT: James Miller, Office of Engineering and Technology, (202) 418–7351.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* adopted April 21, 2004, and released May 4, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this document also 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: *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of the Memorandum Opinion and Order

1. The *Order* denies the application for review (Application) filed by the Society of Broadcast Engineers, Inc. (SBE) who was seeking a second stay of the rules for coordination of fixed aural and video stations in the BAS adopted in the *Report and Order*, 68 FR 12744, March 17, 2003. In the *Report and Order*, the Commission adopted coordination procedures for fixed Aural BAS stations operating on frequencies above 944 MHz and fixed Television BAS stations operating on frequencies above 2110 MHz under part 74 of the rules. The Commission adopted these procedures to conform the coordination procedures for fixed BAS, and Cable Television Relay Service (CARS) under parts 74 and 78, with those already in effect for Fixed Microwave Services (FS) under § 101.103(d) of the rules. It found that the FS procedures were appropriate for fixed BAS and CARS, stating that uniform procedures for bands shared among these services are necessary to promote spectrum efficiency and to minimize the possibility of harmful interference. Because these procedures were already in effect for Aural and TV BAS stations in the bands 6425–6525 MHz and 17700–19700 MHz, the new rules only affected fixed BAS in the bands 944–952 MHz (950 MHz), 2450–2583.5 MHz (2.5 GHz), 6875–7125 MHz (7 GHz), and 12700–13250 MHz (13 GHz).

2. During the six-month stay, SBE requested a blanket waiver of application fees for BAS applications filed to provide information missing from the ULS, in order to encourage the filing of such applications. On September 3, 2003, the FCC's Office of Managing Director (OMD) dismissed SBE's request for relief and denied the request for waiver, stating that the Commission may only consider such requests filed by individual applicants pertaining to their own applications in accordance with § 1.1117, and, moreover, that SBE had not established good cause for a waiver of application fees.

3. SBE sought a further stay of the Commission rules on October 1, 2003. In its Second Request, SBE generally reiterated the reasons set forth in its Initial Request and argued for an additional six-month stay. SBE provided updated figures suggesting that approximately 50% of fixed stations in the 7 GHz and 13 GHz bands do not have receive site coordinates listed in the ULS. SBE noted that many BAS licensees had waited for a determination of the outcome of its fee waiver request before filing applications to provide the receive site information. SBE stated that it had publicized the September 3, 2003, denial of the waiver request and had taken more aggressive steps to urge BAS licensees to complete and correct the license record for their facilities, but that the initial six-month stay had proven insufficient. SBE requested the additional six months as a ''final opportunity'' for BAS licensees to supply the information. The National Spectrum Managers Association (NSMA), in its Opposition to the

Request for Extension of Temporary Stay (Opposition), opposed an additional stay, asserting that the institution of new coordination procedures would best satisfy SBE's concerns about appropriate interference analysis, whereas delay would not address or satisfy SBE's concerns about database completeness and accuracy. NSMA argued that the opportunity for response in the coordination process would most effectively generate interaction and data sharing and address SBE's concerns. NSMA conceded that the database inaccuracies could lead to inaccurate interference analysis before the notification is initiated, but emphasized that the bilateral process would address the possibility of missing or inaccurate BAS path information. SBE, in its reply to the Opposition, asserted that NSMA's experience with the more accurate databases used by the FS under part 101 was not relevant in evaluating the additional time needed to address deficiencies with Aural and TV BAS information in the ULS. SBE objected to NSMA's suggestion that the coordination under the new rules could proceed by relying on responses from broadcasters contacted to address potential missing or inaccurate BAS information as suggested by NSMA. However, SBE stated in its reply that it would be reasonable to proceed with the new coordination rules if, after an additional six months, the database was still inaccurate.

4. OET applied the Commission's four-part test for evaluating stay requests and issued its *Denial Order*, 18 FCC Rcd 21134, (2003), denying SBE's Second Request for stay, finding it was not warranted, and ordering that the coordination rules would go into effect on October 16, 2003. In applying the four-part test, OET considered whether: the stay would likely succeed on its merits; irreparable harm would be suffered if a stay was not granted; other interested parties would be harmed if the stay were granted; and the public interest would favor granting of the stay. OET concluded that while the database concerns raised again by SBE might remain a concern, there was no indication that additional time would cure these issues. OET noted that licensees had already had nearly one year since the rules were first adopted and released until the expiration of the first stay. Moreover, OET noted that licensees had six weeks from notice of the waiver denial to the end of the stay to file or correct information for the ULS. OET concluded that the database issues would not seriously affect the efficacy of the coordination process and harm licensees subject to these rules. Finally, OET found that further delay in the application of the coordination procedures would not be in the public interest, because it would unnecessarily delay the efficiency and protection benefits offered by these procedures.

5. The Commission deny SBE's request to review and reverse the *Denial Order*, because any remaining concerns to resolve database inaccuracies do not warrant further delay of the benefit of the rules. In the application for review, SBE urges review of the *Denial Order*, arguing that a further stay of the coordination rules is warranted because, contrary to OET's conclusions in the *Denial Order*, an additional six-month extension would cure existing database issues, and prior coordination under the adopted rules cannot proceed until the database inaccuracies are corrected. SBE, while acknowledging that licensees were not required to wait for the resolution of the request for a blanket waiver of application fees for BAS applications, argues that licensees' delay in complying with the *Report and Order* until the resolution of the fee waiver request on September 3, 2003 was reasonable. SBE also argues that although OET pointed out in its *Denial Order* that the coordination rules adopted in the *Report and Order* were released to the public on November 13, 2002, the rules were not published in the **Federal Register** until March 17, 2003. Finally, SBE argues that the Commission cannot conclude that there is any benefit or efficiency to be gained from letting the coordination rules take effect under the present circumstances. No comments were filed in response to the application for review.

6. The Commission disagree with SBE and, thus, deny its Application to reverse the *Denial Order.* Commission rules require that applications for review concisely and plainly state the questions presented for review with reference, where appropriate, to the findings of fact or conclusions of law and which of the five factors identified by the rules warrant Commission consideration. SBE asserts that OET made various erroneous factual conclusions. However, we find no ''erroneous finding as to any important or material question of fact,'' or other factor that warrants review. We agree with the substantive conclusions of OET stated in the *Denial Order,* and find that OET correctly determined that granting SBE's Second Request for stay was not warranted. OET correctly concluded that the request was not likely to prevail on the merits; that irreparable harm was not likely to result if the stay was denied; and that the public interest did not favor granting the stay, and it properly denied the request.

7. The Commission believes that, while further improvements of the database are desirable, as raised by SBE in its Application, there is no indication that additional time would result in the resolution of the inaccuracies complained of, nor that a need is demonstrated by the likelihood of irreparable harm if these issues are not resolved prior to the coordination rules coming into effect. SBE acknowledges in its reply comments to its Second Request that even if the Commission should grant additional time, there is a possibility database inaccuracies would remain unresolved. It further agrees that at some point the coordination rules should enter into effect, irrespective of any remaining database inaccuracies. This admission is counter to SBE's arguments that additional time would cure the remaining database inaccuracies. Further, SBE's admission that the rules should go into effect even if the inaccuracies are not completely resolved (whether on October 16, 2003 or six months later) supports our conclusion that OET correctly found that the efficacy of the coordination rules need not be seriously impacted by possible database inaccuracies. Moreover, whereas OET found that the potential benefit of database corrections weighed favorably in the context of a brief delay in the implementation of our rules and an anticipated improvement in the database, we note that the grant of additional extensions would result in a lengthy period of time between the adoption and effectiveness of the new coordination procedures, with little apparent benefit to be derived, based on our experience with the last stay. Whereas OET may have considered the probable effect of the initial extension of time in a light most favorable to SBE, we are not obliged to do so, and activity during the six-month stay confirms that the case has not been made for any further delay.

8. SBE raises the issue of whether it was reasonable for licensees to wait on a determination of SBE's blanket fee waiver request before addressing database inaccuracies. We find this concern is not material and does not warrant review of the *Denial Order.* OET correctly states that licensees were not barred from taking steps to address the database inaccuracies during the initial six-month stay until the fee waiver request was resolved, because if the fee waiver was granted their application fees would have been refunded. In any event, the grant or denial of the blanket fee waiver would not have cured the issues that were argued to support the

Initial Request, or relieved licensees from the need to prepare their applications. Whether or not licensees' application fees would have been refunded, those applications would presumably still have had to be prepared and filed to cure the database concerns. Moreover as OET indicated, even after the disposition of the blanket fee waiver, individual licensees could have filed their own requests for fee waivers, if a waiver of application fees was compelling. It seems prudent and reasonable that licensees electing to wait would have prepared for filing in anticipation of the resolution of the waiver request, and filed during the six week window remaining between the September 3, 2003, determination of SBE's fee waiver request and the last day of the stay, October 15, 2003. In fact, as OET notes, Commission records indicate the modest increase in the filing of applications for Aural and TV BAS modifications during the stay, possibly attributable to filings for completion and correction of receive site information, primarily occurred in the last month of the stay. We infer from this that even parties who waited prepared to file during the stay period, and in fact did complete filings to complete or correct receive site information, and that our actions taken in this proceeding to address licensees' filings to database inaccuracies have been appropriate but do not warrant further delay.

9. The Commission agrees with OET that the continued existence of incomplete and inaccurate records in the ULS, while undesirable, is not fatally detrimental to the efficacy of coordination procedures nor otherwise likely to result in irreparable harm due to interference to existing facilities, as stated in the *Stay Order,* 68 FR 41284, July 11, 2003. We agree with OET that coordination procedures using appropriate conservative default criteria, as discussed in the *Stay Order,* can proceed successfully even with incomplete or inaccurate database information. The procedures provide a practicable opportunity for all potentially affected parties to respond to the proposed coordination request to address missing or corrective information where needed, before the facilities are formally subject to an application. As the *Denial Order* clarified, consistent with the coordination requirement for full cooperation and reasonable effort among all parties in resolving potential conflicts, existing licensees have a responsibility to respond whenever a notification contains any omissions or errors regarding their facilities that could lead to potential interference. It will be the initiating party's responsibility to provide existing licensees with the complete information used to characterize the notified party's facilities for the engineering studies and analyses upon which the coordination is based. Further, where data is missing or incorrect in the notification, and the complete or corrective data is brought to the initiating party's attention via response, it will be the initiating party's responsibility to conduct any engineering studies and analyses required to reassess the impact on the existing facilities, as newly documented, and reinitiate coordination, as needed.

10. Finally, in view of the above, the Commission agrees with OET that further delay in the application of the coordination procedures for Aural and TV BAS is not in the public interest, because it will unnecessarily delay the efficiency and protection benefits offered by these procedures. These new procedures afford all potentially affected existing licensees sufficient opportunity to respond to each proposal, and are sufficient to avert harmful interference to or from existing facilities. The effect of these rules will enable parties to identify complete and accurate information on existing facilities. Thus, while the initial stay was a reasonable response towards the goal of achieving a complete and accurate database, it now appears that further delay would not significantly advance that goal.

11. As the *Denial Order* discussed, under these coordination rules, licensees can be expected to act in their own self-interest to avoid interference. The coordination process provides an opportunity for a potentially affected licensee to respond or otherwise provide corrective information regarding the consideration of its facilities, or the effect of the applicant's new facilities on its facilities. However, in the absence of such a response, the applicant will be deemed to have made reasonable efforts to coordinate and may file the application. The Commission recognizes that if the licensee's receive information in the database is incomplete or incorrect and the licensee fails to provide corrective information during coordination, there could result a grant of new facilities that could ultimately cause interference to an existing licensee. As indicated above, however, we believe that licensees will act in their own self-interest and ensure that the licensee's receive information in the database is complete and correct or provide complete and correct information in response to the applicant's notification.

12. The Commission, therefore, also affirms the action taken in the *Denial Order* to encourage BAS licensees to file applications for minor modification where needed to complete receive site data that is missing in the ULS. The Commission will continue to allow the filing of such applications without frequency coordination, provided the application supplies only missing receive site data. Receive site data may include parameters such as site geographic coordinates, site elevation above mean sea level, and antenna height, beamwidth, gain, manufacturer, and model number. Further, the application must include a showing demonstrating that the station was licensed at a time when receive site information was not required, or documenting that the information now missing was previously licensed or provided under application to the FCC. The information provided must also be consistent with any data already in the database, such as transmit azimuth or receive site data. The filing of receive site information without coordination, where it is missing under circumstances as described above, is appropriate and will continue to be permitted.

Ordering Clauses

Pursuant to sections 4(i), 303(c), 303(f), 303(g), 303(r), and 309(j), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r) and 309(j), the application for review filed by the Society of Broadcast Engineers is denied.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–12945 Filed 6–16–04; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 69, No. 116
Thursday, June 17, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–227–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Fan Jet Falcon Series Airplanes and Model Mystere-Falcon 20 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 Dassault Model Fan Jet Falcon series airplanes and Model Mystere-Falcon 20 series airplanes. That action would have required inspecting and testing for fatigue cracking due to stress corrosion in the vertical posts of the window frames in the flight compartment. This new action revises the proposed rule by adding airplanes to the applicability, clarifying which airplanes must do certain actions, and specifying which window frames to ultrasonically inspect. The actions specified by this new proposed AD are intended to prevent fatigue cracking of the window frames, which could result in rapid depressurization 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 July 12, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–227–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–227–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 Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; 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–227–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–227–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 Dassault Model Fan Jet Falcon series airplanes and Model Mystere-Falcon 20 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 6, 2004 (69 FR 5767). That NPRM would have required inspecting and testing for fatigue cracking due to stress corrosion in the vertical posts of the window frames in the flight compartment. That NPRM was prompted by mandatory continuing airworthiness information from a civil airworthiness authority. Cracking of the window frames, if not corrected, could result in rapid depressurization of the fuselage and consequent reduced structural integrity of the airplane.

Comments

Due consideration has been given to the comments received from a single commenter in response to the NPRM.

Request To Revise Applicability

The commenter, the airplane manufacturer, states that the applicability of the NPRM is incorrect because it excludes airplanes that incorporated Dassault Service Bulletin FJF–701, Revision 1, dated October 22, 1987. The commenter states that

airplanes that incorporated the service bulletin should be exempt from the endoscopic inspections proposed in the NPRM, but not the ultrasonic inspections.

We agree with the commenter and have revised the applicability of this supplemental NPRM (SNPRM) to include all Model Fan Jet Falcon series airplanes and Model Mystere-Falcon 20 series airplanes, certificated in any category.

Request To Allow Flight With Cracking

The commenter notes that, in the French airworthiness directive, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, approved continued flight with cracking. The commenter states that window frames only need to be repaired per a method approved by the FAA or the DGAC (or its delegated agent) if cracking found during any inspection exceeds the criteria specified in Dassault Aviation Work Cards 53–30–12 and 53–30–7. (Those work cards are referenced in the NPRM as the appropriate source of service information for the proposed actions.) The commenter requests that paragraph (c) of the NPRM be changed to allow flight with cracking that is within the limits specified in the Dassault work cards.

We do not agree with the commenter's request to allow flight with cracking within specified limits. It is our policy to require repair of known cracking prior to further flight (we may make exceptions to this policy in certain cases of unusual need, as discussed below). This policy is based on the fact that such damaged airplanes do not conform to the FAA-certificated type design and, therefore, are not airworthy until a properly approved repair is incorporated.

As noted above, we may make an exception to this policy in certain cases, if there is an unusual need for a temporary deferral. Unusual needs include such circumstances as legitimate difficulty in acquiring parts to accomplish repairs. Under such conditions, we may allow a temporary deferral of the repair, subject to a stringent inspection program we find acceptable. We consider the compliance times in this proposed AD to be adequate to allow operators to acquire parts to have on hand in the event that cracking is detected during any inspection or test. Therefore, we have determined that, due to the safety implications and consequences associated with such cracking, any window frame found with cracking must be repaired before further flight.

No change to this SNPRM is necessary in this regard.

Request To Revise Paragraph (a)(1) of the NPRM

The commenter requests that paragraph (a)(1) of the NPRM be revised to exclude airplanes that have incorporated Dassault Service Bulletin FJF–701, Revision 1. Those airplanes have removable fairings in the area of the endoscopic inspections. An inspection program is already in place for airplanes with removable fairings so the endoscopic inspections in the NPRM are not necessary on these airplanes.

We agree with the commenter's request and have revised paragraph (a)(1) of this SNPRM to specify that only airplanes that have not incorporated Dassault Service Bulletin FJF–701, dated March 25, 1986, or Revision 1 dated October 22, 1987, are required to do the endoscopic inspections.

Request To Revise Paragraph (a)(2) of the NPRM

The commenter states that ultrasonic inspections do not need to be done on all window frames, as stated in the NPRM. Only window frames 2, 5, 7, 8, and 10 may be subject to stress corrosion; therefore, those are the only window frames that need to be inspected. The commenter also notes that all airplanes should do the ultrasonic inspection required by paragraph (a)(2) of the NPRM.

We agree with the commenter that only the window frames that are subject to stress corrosion need to be ultrasonically inspected, and that all airplanes must do the ultrasonic inspection. We revised paragraph (a)(2) of this SNPRM accordingly.

Conclusion

Since certain changes expand the scope of the original NPRM, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

We estimate that 220 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $57,200, or $260 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:

Dassault Aviation: Docket 2002–NM–227–AD.

Applicability: All Model Fan Jet Falcon series airplanes and Model Mystere-Falcon 20 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the window frames in the flight compartment, which could result in rapid depressurization of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Inspection and Test of Flight Compartment Window Frames

(a) Do an inspection and test for stress corrosion and cracking as specified in paragraphs (a)(1) and (a)(2) of this AD, at the applicable time specified in paragraph (b) of this AD.

(1) For airplanes that have not accomplished the actions specified in Dassault Service Bulletin FJF–701, dated March 25, 1986; or Revision 1 dated October 22, 1987: Do a detailed inspection (using an endoscope) to detect stress corrosion and cracking of the window frames in the flight compartment, including the pilot, co-pilot, and front windows. Do the inspection in accordance with Dassault Aviation Work Card 53–30–12, titled ''Endoscopic Inspection of the Frames of Pilot, Co-Pilot, and Front Glass Panels (Aircraft Not Changed Per SB No. 701),'' of the Dassault Aviation Fan Jet Falcon Maintenance Manual, dated November 2001.

(2) For all airplanes: Do an ultrasonic test for cracking in the posts of window frames 2, 5, 7, 8, and 10. Do the test in accordance with Dassault Aviation Work Card 53–30–07, titled ''Non-Destructive Ultrasonic Testing of Vertical Posts on Screw-Mounted Windows,'' of the Dassault Aviation Fan Jet Falcon Maintenance Manual, dated November 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.''

(b) Do the inspection and test required by paragraph (a) of this AD, at the times specified in paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes having 35 or more years since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever is first; or having accumulated 20,000 or more total flight cycles as of the effective date of this AD: Within 7 months after the effective date of this AD.

(2) For airplanes not identified in paragraph (b)(1) of this AD: Within 25 months or 2,500 flight cycles after the effective date of this AD, whichever is first.

Repair

(c) If any stress corrosion or cracking is found during any inspection or test required by paragraph (a) of this AD: Before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent).

Reporting Requirement

(d) At the applicable time specified in paragraph (d)(1) or (d)(2) of this AD: Submit a report of the findings (positive and negative) of the inspection required by paragraph (a) of this AD to: Dassault Falcon Jet, Attn: Service Engineering/Falcon 20, fax: (201) 541–4706, at the applicable time specified in paragraph (d)(1) or (d)(2) of this AD. The report must include the airplane serial number, number of landings, number of flight hours, airplane age, and the number and length of any cracks found. Submission of the Charts of Records (part of French airworthiness directive 2001–600–028(B), dated December 12, 2001), is an acceptable method of complying with this requirement. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 5 days after the inspection.

(2) If the inspection was done prior to the effective date of this AD: Submit the report within 5 days after the effective date of this AD.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in French airworthiness directive 2001–600–028(B), dated December 12, 2001.

Issued in Renton, Washington, on June 9, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13702 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

Petitions of the Chicago Board of Trade, the Kansas City Board of Trade, and the Minneapolis Grain Exchange Pursuant to Commission Regulation 13.2 for Repeal or Amendment of Speculative Position Limits in Commission Regulation 150.2

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of petitions for amendment, or repeal of a rule, and request for comment on the petitions.

SUMMARY: The Chicago Board of Trade (CBT), the Kansas City Board of Trade (KCBT), and the Minneapolis Grain Exchange (MGE) have submitted separate petitions to the Commodity Futures Trading Commission (Commission) seeking repeal or amendment of the speculative position limits set out in Commission regulation 150.2 (Federal speculative position limits). In addition, the New York Board of Trade, while not submitting a formal petition of its own, has submitted a letter in support of the CBT petition. The Commission believes that publication of the petitions for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the Commodity Exchange Act (Act) and Commission regulations. Copies of the petitions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, or on the Commission's website at *http://www.cftc.gov.* Copies of the proposed amendments can also be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

DATES: Comments must be received on or before August 16, 2004.

ADDRESSES: Comments should be submitted to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments also may be sent by facsimile to (202) 418–5521, or by electronic mail to *secretary@cftc.gov.* Reference should be made to ''Petitions for Repeal or Amendment of Federal Speculative Position Limits.'' Comments may also be submitted by connecting to the Federal eRulemaking Portal at *http://www.regulations.gov* and following comment submission instructions.

FOR FURTHER INFORMATION CONTACT: Clarence Sanders, Attorney, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, telephone (202) 418–5068, facsimile number (202) 418–5507, electronic mail *csanders@cftc.gov;* or Martin Murray, Industry Economist, Division of Market Oversight, telephone (202) 418–5276, facsimile number (202) 418–5507, electronic mail *mmurray@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Speculative position limits have been a tool for the regulation of the futures markets for over a half-century. The current regulatory framework is two-pronged. Under the first prong, the Commission establishes and enforces speculative position limits for futures contracts on various agricultural commodities. These Federal limits are enumerated in Commission regulation 150.2, and apply to the following futures and option markets: CBT corn, oats, soybeans, wheat, soybean oil, and soybean meal; MGE hard red spring wheat and white wheat; New York Cotton Exchange (NYCE) cotton No. 2; and KCBT hard winter wheat.[1] Under the second prong, individual designated contract markets (DCMs) establish and enforce their own speculative position limits or position accountability provisions, subject to Commission oversight and separate authority to enforce exchange-set speculative position limits that the Commission has approved.

The CBT, by letters dated March 26, 2004, and April 27, 2004, the KCBT, by a letter dated April 27, 2004, and the MGE, by a letter dated May 20, 2004, submitted petitions to the Commission pursuant to Commission regulation 13.2.[2] Specifically, the CBT petition requests that the Commission repeal regulation 150.2 and thereby eliminate the Federal speculative position limits for all commodity markets enumerated under that rule. The KCBT petition requests that the Commission repeal only that part of regulation 150.2 pertaining to Federal speculative position limits for the KCBT commodity markets (*i.e.*, hard winter wheat). The MGE petition also seeks repeal of the regulation 150.2 as it relates to Federal speculative limits for the MGE market in hard red spring wheat but does not address that DCM's market in white wheat, which is currently dormant. In addition, the New York Board of Trade (NYBOT), the parent company of NYCE, while not submitting a formal petition of its own, submitted a May 27, 2004, letter stating that it ''fully supports the CBOT petition.''

Under all three petitions, in place of the repealed speculative position limits, designated contract markets would bear the sole responsibility for setting their own position limits or position accountability standards, subject to Commission oversight and enforcement. In this regard, the CBT has previously established its own exchange-set speculative position limits that are independent of, but set at the same or lower levels as, the Federal limits. The MGE and NYCE incorporate the existing Federal limits by reference in their respective rulebooks; they have not established independent limits on speculative positions for these commodity futures markets. Likewise, the KCBT currently has no provisions pertaining to speculative position limits for hard winter wheat. Therefore, if Federal limits were abolished, these exchanges would need to adopt speculative position limits or position accountability provisions, as appropriate, to comply with Core Principle 5 and the acceptable practices thereunder.

Although the CBT, KCBT, and MGE petitions differ in scope, they are similar in topical substance and for this reason are being combined for purposes of publishing notice and requesting comment.

II. Background

A. Statutory Framework

During the past half-century, Congress consistently has expressed confidence in the use of speculative position limits as an effective means of preventing unreasonable or unwarranted price fluctuations. See H.R. Rep. No. 421, 74th Cong., 1st Sess. 1 (1935). In this regard, section 4a(a) of the Act, 7 U.S.C. 6a(a), states that:

> Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets or derivatives transaction execution facilities causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity.

Accordingly, section 4a(a) provides the Commission with the authority to:

> Fix such limits on the amounts of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility as the Commission finds are necessary to diminish, eliminate, or prevent such burden.

This longstanding statutory framework providing for Federal speculative position limits was supplemented with the passage of the Futures Trading Act of 1982, which acknowledged the role of exchanges in setting their own speculative position limits. The 1982 legislation also provided, under section 4a(e) of the Act, that limits set by exchanges and approved by the Commission were subject to Commission enforcement.

Finally, the Commodity Futures Modernization Act (CFMA) of 2000 established designation criteria and core principles with which a DCM must comply to maintain designation. Among these, Core Principle 5 in section 5(d) of the Act states:

> Position Limitations or Accountability—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate.

B. Regulatory Framework

As noted above, the current regulatory framework of speculative position limits is two-pronged: (1) For a limited number of agricultural commodities, Federal speculative position limits have been set and are enforced by the Commission; and (2) for virtually all other commodities under Commission jurisdiction, speculative position limits or position accountability provisions have been established and enforced by individual DCMs, subject to Commission oversight and enforcement. An abbreviated history of the regulatory framework follows.

Federal speculative position limits were first promulgated by the Commodity Exchange Commission (CEC),[3] a predecessor of the Commission, for futures contracts in grains (then defined as wheat, corn, oats, barley, flaxseed, grain sorghums, and rye) on December 22, 1938 (3 FR 4136). A Federal speculative position limit was established for cotton on August 26, 1940 (5 FR 3198), and for soybeans on August 13, 1951 (16 FR 8107). The CEC also established Federal speculative position limits for fats and oils, including soybean oil, on April 1, 1953, but soon suspended the enforcement of those limits and eventually revoked them (33 FR 7624, May 23, 1968). At various other times, the CEC also established Federal speculative position limits on lard, onions, eggs, and potatoes.

The CEC never established Federal speculative position limits for many of

[1] For each of these markets, regulation 150.2 establishes a spot month limit, a non-spot individual month limit, and an all-months-combined speculative position limit.

[2] Commission regulation 13.2 states in pertinent part that ''any person may file a petition with the Secretariat of the Commission for the issuance, amendment, or repeal of a rule of general application.''

[3] Prior to the CFTC's creation in 1974, the Commodity Exchange Authority administered the Commodity Exchange Act under the direction of the Secretary of Agriculture and the Commodity Exchange Commission, which was composed of the Secretaries of Agriculture and Commerce and the Attorney General.

the agricultural commodities subject to its jurisdiction, including butter, wool, wool tops, livestock, and livestock products. It is worth noting that the Chicago Mercantile Exchange (CME) began trading pork belly futures in 1961, live cattle futures in 1964, and live hog futures in 1966. Even before those contracts were added to the list of regulated commodities in 1968, the CME, under its own authority, established speculative position limits for those contracts. While the record is unclear on this matter, the existence of exchange-set speculative position limits may explain why the CEC (and its successor, the Commission) never determined that Federal speculative position limits were necessary in livestock futures contracts.

The Commodity Futures Trading Commission Act of 1974 (CFTC Act) created the Commission and granted it exclusive jurisdiction over futures trading in all commodities, not just specifically enumerated agricultural commodities. The CFTC Act transferred authority over Federal limits to the Commission from the CEC, but did not otherwise substantively amend section 4a. The CFTC Act also gave the Commission the authority to oversee, and, if necessary, to amend, exchange rules, including speculative position limit provisions proposed by exchanges. In 1981, the Commission, for the first time, required exchanges to establish speculative position limits for all commodities not subject to Federal limits (see 45 FR 50938, October 16, 1981). Provisions for the establishment of exchange-set speculative position limits are contained in Commission regulation 150.5.[4] In addition, as noted above, the Futures Trading Act of 1982 modified section 4a of the Act to provide the Commission with the authority to separately enforce exchange-set limits that have been approved by the Commission.

Since the Commission's founding, it has retained Federal speculative position limits on those commodities where such limits had previously been established by the CEC. For other commodities, the Commission has allowed exchanges to set speculative position limits or position accountability provisions, subject to Commission oversight and enforcement. The one exception is that the Commission established Federal speculative position limits in 1987 on soybean oil and soybean meal (52 FR 38914, October 20, 1987), at the request of the CBT, in order to make the regulatory treatment of soybean products consistent with the regulatory treatment of soybeans.

In 2000, the enactment of the CFMA resulted in the establishment of designation criteria and core principles with which a DCM must comply to maintain its designation, including Core Principle 5, as noted above. To implement these new statutory provisions, the Commission adopted part 38 to the Commission's regulations, which provides guidance and acceptable practices concerning the core principles under section 5(d) of the Act (66 FR 42256, August 10, 2001).[5] Regarding compliance with Core Principle 5 (position limitations or accountability), the acceptable practices provide, in relevant part, that spot-month limits should be adopted for markets based on commodities having more limited deliverable supplies or where otherwise necessary to minimize the susceptibility of the market to manipulation or price distortions, and that markets may elect not to provide all-months-combined and non-spot individual month limits. In addition, under part 38, the existing provisions governing the establishment of exchange-set speculative position limits contained in regulation 150.5 may still serve as acceptable practices.

III. The Exchange Petitions for Repeal or Amendment of the Speculative Position Limits in Commission Regulation 150.2

A. Introduction

As noted above, the CBT, KCBT, and MGE petitions essentially seek to repeal, in whole or in part, the Federal limits set out in regulation 150.2. In place of the repealed speculative position limits, DCMs would bear the sole responsibility for setting their own position limits or position accountability standards, subject to Commission oversight. In this regard, as noted above, the CBT currently specifies speculative position limits independently of, but at the same or lower levels as, the existing Federal speculative position limits. However, should the Commission repeal Federal speculative position limits, then the exchange would be free to retain those limits or to adjust them, as long as the exchange-set speculative position limits or position accountability standards comply with Core Principle 5. In contrast, the MGE and NYCE specify speculative position limits for their respective commodity markets that are currently subject to Federal limits only by reference to the provisions of regulation 150.2, and the KCBT does not have any specifications regarding speculative position limits for hard winter wheat. Consequently, if the Commission were to repeal Federal limits, the MGE (for hard red spring wheat and white wheat), the NYCE (for cotton No. 2), and the KCBT (for hard winter wheat) would need to adopt speculative position limits or position accountability provisions to comply with Core Principle 5 and the acceptable practices set forth in Part 38 of the Commission's regulations.

As discussed below, the CBT, KCBT, and MGE petitions include analytical information in support of their respective propositions and, additionally, seek other action either as a supplement, or an alternative, to the requested repeal of the limits in regulation 150.2.

B. The CBT Petition

Fundamentally, the CBT petition seeks to have the Commission repeal the Federal limits set out in regulation 150.2 and to allow designated contract markets to bear the sole responsibility for setting their own position limits, subject to Commission oversight. In support of this initiative, the CBT notes that the CFMA has substituted a more flexible regulatory model, based upon core principles, for the former rules-based approach to regulation. In this respect, the CBT notes that Core Principle 5 of section 5(d) of the Act states that:

> To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate.

The CBT acknowledges that the Commission retains authority under section 4a(a) of the Act to establish speculative position limits, but concludes that Core Principle 5 of the CFMA should be interpreted to place that responsibility upon the exchanges.

As a secondary initiative, the CBT asks that, if the Commission determines to retain Federal spot month speculative position limits, at a minimum it should consider eliminating the single-month and all-months-combined limits from regulation 150.2. In support of this proposition, the CBT cites the

[4] Provisions regarding the establishment of exchange-set speculative position limits were originally set forth in CFTC regulation 1.61. In 1999, the Commission simplified and reorganized its rules by relocating the substance of regulation 1.61's requirements to part 150 of the Commission's rules, thereby incorporating within part 150 provisions for both Federal speculative position limits and exchange-set speculative position limits (see 64 FR 24038, May 5, 1999).

[5] Part 38 specifically notes, however, that ''The guidance * * * is illustrative only of the types of matters a board of trade may address, as applicable, and is not intended to be a mandatory checklist.''

discussion of acceptable practices for spot-month limits under Core Principle 5 in appendix B to part 38 of the Commission's regulations. For markets having limited deliverable supplies, the CBT notes that the acceptable practices state ''[m]arkets may elect not to provide all-months-combined and non-spot month limits.''

Finally, as an alternative to repeal of all or part of the limits included in regulation 150.2, the CBT requests that the Commission amend that regulation to increase the single-month and all-months-combined speculative position limits for the corn, soybeans, wheat, soybean oil, and soybean meal contracts traded at the CBT. Under this part of the petition, the CBT seeks to increase the speculative position limit levels as set out below.

CBT contract	Current level	CBT-proposed level
Single Month Limit		
Corn	5,500	10,000
Soybeans	3,500	6,500
Wheat	3,000	4,500
Soybean Oil	3,000	4,500
Soybean Meal	3,000	4,500
All-Months-Combined Limit		
Corn	9,000	17,000
Soybeans	5,500	10,000
Wheat	4,000	5,500
Soybean Oil	4,000	6,500
Soybean Meal	4,000	6,000

The CBT cites several criteria in support of the levels proposed in this part of the petition. Among these, the CBT notes that it conducted a survey of the agricultural trading community and found that a majority of respondents supported an increase in single-month and/or all-months-combined limits. Additionally, the CBT notes that most respondents supporting an increase in limits also sought to retain the same approximate ratio of single-month to all-months-combined limits. The CBT asserts that the higher levels conform to this standard and preserve the same approximate ratio as sought by supporting survey respondents.

The CBT also comments that the proposed increases are consistent with the percentage of open interest formula included in regulation 150.5.[6] In this regard, the CBT acknowledges that the formula applies to exchange-set limits not enumerated in Regulation 150.2 but also observes that the Commission applied this same formula when it initiated action to increase CBT agricultural commodity limits to their present levels (57 FR 12766, April 13, 1992).

Finally, the CBT asserts that the proposed increases are supported by the distribution of large trader positions in the relevant markets. In support of this, the CBT contends that the Commission has acknowledged that the distribution of speculative traders is a relevant consideration in determining limit levels and could conceivably support higher limits than justified under the open interest formula where such levels ''would constrain the normal pattern of speculative trading.'' (57 FR 12766, April 13, 1992).

C. The KCBT Petition

As with the CBT petition, the KCBT seeks the repeal of Federal limits for the KCBT wheat contract as set out in regulation 150.2, but in contrast to the CBT petition, the KCBT seeks to operate its hard winter wheat contract without any exchange-set speculative position limits. Like the CBT, the KCBT finds support for this initiative in Core Principle 5 of the CFMA, and emphasizes the core principle's focus on the role of speculative limits in reducing the potential threat of manipulation.

In discussing this aspect of its petition, the KCBT notes that Core Principle 5 of section 5(d) of the Act requires DCMs to adopt speculative position limits or position accountability provisions to reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, where necessary and appropriate. The KCBT further notes that the acceptable practices for speculative position limits under Core Principle 5 in appendix B to part 38 of the Commission's regulations instructs that spot-month limits should be adopted for commodity markets ''having more limited deliverable supplies,'' and are to be based upon an analysis of deliverable supplies and the history of spot-month liquidations for the applicable contract. In this respect, the KCBT notes, among other things, that gross underlying supply represents about 45 percent of U.S. wheat production. The KCBT concludes that the supply characteristics of its wheat contract, in combination with its surveillance practices, including heightened surveillance of spot-month liquidations, justify the elimination of spot-month limits from regulation 150.2, as well as single-month, and all-months-combined limits.

If the Commission chooses to retain Federal speculative position limits, the KCBT petition also includes a request that the Commission continue to maintain ''parity'' in speculative position limit levels across wheat exchanges. In support of this portion of its petition, the KCBT includes a discussion of the volume and composition of trading in its wheat contract. Here, KCBT notes that significant trading volume is generated from arbitrage opportunities that exist between markets, and that differing limits between exchanges could affect the growth potential for inter-market spread volume. Following on this, the KCBT notes that growth in trading volume has been strong in recent years, and attributes this growth to the maintenance of parity in speculative limits between exchanges. In this respect, the KCBT also observes that the increased growth in volume since 1999 has also attracted commodity fund business to the KCBT wheat market, and again observes that, if parity in speculative limits is not maintained, fund business could be lost to other markets with higher limits.

Finally, the KCBT comments that reportable commercial traders continue to hold the majority of open interest in KCBT wheat futures, and that increasing speculative limits would permit an increase in speculative activity and in turn increase liquidity to the benefit of commercial users.

D. The MGE Petition

In its petition, the MGE seeks the repeal of Federal limits for trading in MGE hard red spring wheat, and acknowledges its intention to establish speculative position limits for the MGE hard red spring wheat contract pursuant to Core Principle 5. Like the other petitioning DCMs, the MGE finds support for this initiative in Core Principle 5, and it also emphasizes that core principle's focus on speculative limits as a means of reducing the potential threat of manipulation.

In this part of its petition, the MGE notes that Federal speculative limits for wheat were most recently increased during 1999, and concludes that this increase was intended to recognize the

[6] Regulation 150.5 stipulates that individual, non-spot month or all-months-combined limit levels should be set at no greater than 1,000 contracts at the time of initial listing of agricultural commodities. The regulation further provides that adjustments to those levels may be made provided that the resultant levels are no greater than 10% of the average combined futures and delta-adjusted option month-end open interest for the most recent calendar year up to 25,000 contracts with a marginal increase of 2.5% thereafter, or be based on position sizes customarily held by speculative traders on the contract market, which shall not be extraordinarily large relative to total open positions in the contract, the breadth and liquidity of the cash market underlying each delivery month and the opportunity for arbitrage between the futures markets and the cash market.

greater interest and activity in wheat futures trading, including the hard red spring wheat contract at the MGE. The MGE states that it has not observed any increased susceptibility to manipulation or price distortion in the hard red spring wheat contract during the period following the 1999 increase in Federal speculative limits. Rather, the MGE remarks that the increase in Federal speculative limits appears to have added liquidity and stability to the marketplace.

The MGE observes that Core Principle 5 requires DCMs to adopt position limits or position accountability for speculators where necessary and appropriate. The MGE further notes that the acceptable practices for under Core Principle 5 set forth in appendix B to part 38 of the Commission's regulations provides that spot-month limits adopted for physical delivery markets are to be based upon an analysis of deliverable supplies and the history of spot-month liquidations for the applicable contract. In addressing this provision, the MGE notes that its review of the hard red spring wheat contract confirms the presence of an adequate deliverable supply before and during each delivery period, and that the largest position holders have been commercial traders. Thus, the MGE concludes that the hard red spring wheat contract's susceptibility to manipulation by speculators is limited by these characteristics. The MGE also observes that the current speculative limits mandated under regulation 150.2 have the effect of limiting MGE's ability to exercise its self-regulatory duties under Core Principle 5.

Should Federal speculative position limits not be repealed, the MGE requests that the Commission continue to maintain ''parity'' in speculative limits for its hard red spring wheat contract with the comparable speculative limits for the wheat contracts at the CBT and KCBT. The MGE notes that speculative limits historically have been uniform at the three domestic DCMs trading wheat contracts and that failure to maintain this equality would be unfairly discriminatory, not only to the MGE, but also to its market participants. In this regard, the MGE observes that many traders at the MGE, and in particular the commodity funds, utilize arbitrage opportunities among the wheat markets, and that any disparate treatment in speculative limits could drive away participants and reduce market liquidity.

E. The NYBOT Letter of Support

As noted above, NYBOT did not submit a petition of its own, but submitted a letter stating that it ''fully supports the CBOT petition.'' In particular, NYBOT expressed support for the repeal of Regulation 150.2 in its entirety. If the Commission does not repeal Regulation 150.2, NYBOT supports the elimination of all non-spot, individual month and all-months-combined limits. In support of its position, NYBOT expresses its belief that the provisions of the Commodity Futures Modernization Act of 2000 place the responsibility of establishing any appropriate position limits on exchanges. Furthermore, NYBOT observes, ''There appears to be no compelling reason to have the Commission set speculative position limits for a narrow segment of agricultural products, while directing the exchanges to set limits for all other agricultural products,'' which NYBOT contends is ''more the result of historical development rather than market regulatory considerations.'' Accordingly, NYBOT concludes that exchanges should have sole responsibility for establishing speculative position limits, subject to Commission oversight.

IV. Request for Comments

The Commission requests comment on all aspects of the CBT, KCBT, and MGE petitions, including the issues identified below.

(1) Should the Commission continue to impose Federal speculative position limits for all of the agricultural commodities enumerated in regulation 150.2? If Federal limits were repealed, then the exchanges would be required to adopt speculative position limits or position accountability provisions for these commodities in accordance with Core Principle 5 and the acceptable practices thereunder, subject to Commission oversight and enforcement.

(2) If recommending that Federal limits be retained for the agricultural commodities enumerated in regulation 150.2, please explain why these commodities should be treated differently, for speculative limit purposes, from other agricultural and non-agricultural commodities where the Commission does not impose Federal speculative position limits.

(3) If recommending that regulation 150.2 not be repealed, please address whether that regulation should nevertheless be modified to eliminate the non-spot, individual-month limits or the all-months-combined limits, as requested in the petitions.

(4) If recommending that the non-spot, individual-month limits and/or the all-months-combined limits be retained in regulation 150.2, what criteria should be considered in determining the acceptable levels? Should the existing criteria in regulation 150.5, based on open interest, be retained, or, if not, what other criteria should be adopted by the Commission?

(5) If Federal speculative position limits are retained, should the increases requested by the CBT in the non-spot, individual month and all-months-combined limits pertaining to the CBT commodity markets be granted? If the increases to the CBT commodity markets are granted, should the KCBT and MGE requests for continuing parity in setting Federal limits also be granted?

(6) If Federal speculative position limits were eliminated, should the Commission modify its acceptable practices for Core Principle 5 to provide greater clarity as to the types of markets for which spot-month speculative position limits are necessary? Should these acceptable practices also include criteria to be considered regarding the setting of non-spot, individual-month limits and all-months-combined limits by the exchanges? If so, what criteria should be adopted by the Commission? Should the Commission require the setting of non-spot, individual-month and all-months-combined limits by the exchanges, in general and for the specific commodities enumerated in Regulation 150.2 in particular?

V. Conclusion

As noted above, the full text of the exchange petitions are available through the Commission's Office of the Secretariat, and are posted on the Commission's Web site.

Issued by the Commission this 9th day of June, 2004, in Washington, DC.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–13678 Filed 6–16–04; 8:45 am]

BILLING CODE 6351–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Revisions To Procedural Rules Governing Practice Before the Occupational Safety and Health Review Commission

AGENCY: Occupational Safety and health Review Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document solicits recommendations for amendments to the Commission's rules of procedure.

DATES: Submit commits on or before July 19, 2004.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, (202) 606–5410, Occupational Safety and Health Review Commission, 1120 20th St., NW., Ninth Floor, Washington, DC 20036–3419.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 2200

Rules of Procedure.

1. The authority citation for part 2200 continues to read as follows:

Authority: 29 U.S.C. 661(g).

2. The Occupational Safety and Health Review Commission last implemented a comprehensive revision of its rules of procedure in 1986. Since that time, technological advances and the evolution of practice before the Commission has made it clear that a careful reexamination of the Commission's rules of procedure, as set forth in 29 CFR part 2200, is desirable. Rather than taking a piecemeal approach, the Commission id considering comprehensive revisions to those rules. To assist the agency in determining what revisions should be made, it hereby solicits recommendations from the public, especially from those who practice before it, for changes to its rules of procedure. Recommended changes to any rule will be considered. Particular areas of interest to the Commission include, but are not limited to, the adoption of rules to implement electronic filing and service of documents, whether electronic filing should be mandatory, the expansion of the range of cases eligible for E–Z trial and the Settlement Part, the availability of appropriate [1] sanctions for rule violations and expanding the authority of administrative law judges to impose such sanctions, the grounds for obtaining Commission review of interlocutory orders issued by its administrative law judges, and the restriction of practice before the Commission to lawyers and in-house company and union representatives. Comments should include a brief discussion of the reasons for the suggested rule change, why the proposed amendment would facilitate improved practice before the Commission, and a reference to authority where necessary.

[1] The Commission is not currently considering the issue of imposing monetary sanctions upon the parties.

Dated: June 10, 2004.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 04–13607 Filed 6–16–04; 8:45 am]

BILLING CODE 7600–01–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1620

Administrative Claims Arising Under the Federal Tort Claims Act

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Proposed rule.

SUMMARY: The Chemical Safety and Hazard Investigation Board (CSB) proposes the adoption of the following regulations that are intended to aid the processing of administrative claims for monetary damages filed under the Federal Tort Claims Act (FTCA). This proposed rule provides information to members of the public who suffer loss or damage of property, personal injury, death, or other damages allegedly caused by the negligence or other wrongful act or omission of CSB officers or employees while acting in the scope of their office or employment. The proposed rule also governs the procedures by which such claims are administratively processed.

DATES: Written comments must be received on or before August 16, 2004.

ADDRESSES: Address all written comments concerning this proposed rule to Christopher M. Lyon, CSB Office of General Counsel, Chemical Safety and Hazard Investigation Board, 2175 K Street, NW., Suite 650, Washington DC 20037.

FOR FURTHER INFORMATION CONTACT: Christopher M. Lyon, CSB Office of General Counsel, (202) 261–7600.

SUPPLEMENTARY INFORMATION: The Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2401(b), 2671–2680, waives the Federal government's sovereign immunity to civil suits for damages in certain instances arising out of the negligent or otherwise wrongful acts or omissions committed by Federal employees while acting within the scope of their employment. General regulations issued by the U.S. Department of Justice for processing FTCA claims, found at 28 CFR 14.11, authorize federal agencies to issue supplementing regulations. Accordingly, the CSB prepared this proposed rule in order to inform the public about the CSB's method of accepting and processing claims arising under the FTCA filed against the agency. Such a rule will provide the public with needed guidance in presenting a tort claim against the CSB, while also ensuring that the agency has established procedures to receive, investigate and adjudicate such claims. The CSB invites comments from interested members of the public on these proposed regulations.

Regulatory Impact

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a rule that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on such small entities. This analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The CSB has considered the impact of this proposed rule under the Regulatory Flexibility Act. The CSB's General Counsel, Christopher W. Warner, certifies that this final rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

This proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act of 1995

This proposed rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

List of Subjects in 40 CFR Part 1620

Claims, Administrative practice and procedure.

Dated: June 10, 2004.

Raymond C. Porfiri,

Deputy General Counsel.

Accordingly, for the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board proposes to add a new 40 CFR part 1620 to read as follows:

PART 1620—ADMINISTRATIVE CLAIMS ARISING UNDER THE FEDERAL TORT CLAIMS ACT

Sec.
1620.1 Purpose and scope of regulations.
1620.2 Administrative claim; when presented.
1620.3 Administrative claim; who may file.
1620.4 Investigations.
1620.5 Administrative claim; evidence and information to be submitted.
1620.6 Authority to adjust, determine, compromise and settle.
1620.7 Limitations on authority.
1620.8 Referral to Department of Justice.
1620.9 Final denial of claim.
1620.10 Action on approved claim.

Authority: 28 U.S.C. 2672; 42 U.S.C. 7412(r)(6)(N); 28 CFR 14.11.

§ 1620.1 Purpose and scope of regulations.

The regulations in this part apply only to administrative claims presented or filed with the Chemical Safety and Hazard Investigation Board (CSB), under the Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2401(b), 2671–2680, as amended, for money damages against the United States for damage to or loss of property, personal injury, death, or other damages caused by the negligent or wrongful act or omission of an officer or employee of CSB while acting within the scope of his or her office or employment, but only under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

§ 1620.2 Administrative claim; when presented.

(a) For purposes of the provisions of 28 U.S.C. 2401(b), 2672, and 2675, a claim is deemed to have been presented when the CSB receives from a claimant, and/or his or her authorized agent, attorney, or other legal representative, an executed Standard Form 95 (Claim for Damage, Injury or Death), or other written notification of an incident, accompanied by a claim for money damages stating a sum certain (a specific dollar amount) for specified damage to or loss of property, personal injury, death, or other compensable damages alleged to have occurred as a result of the incident. A claimant must present a claim within 2 years of the date of accrual of the claim. The date of accrual generally is determined to be the time of death, injury, or other alleged damages, or if the alleged damages are not immediately apparent, when the claimant discovered (or reasonably should have discovered) the alleged damages and its cause, though the actual date of accrual will always depend on the facts of each case. Claimants should be advised that mailing a claim by the 2-year time limit is not sufficient if the CSB does not receive the claim through the mail by that date. Additionally, claimants should be advised that a claim is not considered presented by the CSB until the CSB receives all information requested in this paragraph. Incomplete claims will be returned to the claimant.

(b) All claims filed under the FTCA as a result of the alleged negligence or wrongful act or omission of the CSB or its employees must be mailed or delivered to the Office of the General Counsel, 2175 K Street NW., Suite 650, Washington, DC 20037.

(c) The FTCA requires that a claim must be presented to the Federal agency whose activities gave rise to the claim. A claim that should have been presented to CSB, but was mistakenly addressed to or filed with another Federal agency, is presented to the CSB, as required by 28 U.S.C. 2401(b), as of the date the claim is received by the CSB. When a claim is mistakenly presented to the CSB, the CSB will transfer the claim to the appropriate Federal agency, if ascertainable, and advise the claimant of the transfer, or return the claim to the claimant if the appropriate Federal agency cannot be determined.

(d) A claimant whose claim arises from an incident involving the CSB and one or more other Federal agencies will identify each agency to which the claim has been submitted at the time the claim is presented to the CSB. The CSB will contact all other affected Federal agencies in order to designate a single agency that will investigate and decide the merits of the claim. In the event a designation cannot be agreed upon by the affected agencies, the Department of Justice will be consulted and that agency will designate a specific agency to investigate and determine the merits of the claim. The designated agency will then notify the claimant that all future correspondence concerning the claim must be directed to the designated Federal agency. All involved Federal agencies may agree to conduct their own administrative reviews and to coordinate the results, or to have the investigation conducted solely by the designated Federal agency. However, in any event, the designated agency will be responsible for the final determination of the claim.

(e) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments must be in writing and signed by the claimant or his or her authorized agent, attorney, or other legal representative. Upon the timely filing of an amendment to a pending claim, the CSB will have an additional 6 months in which to investigate the claim and to make a final disposition of the claim as amended. A claimant's option under 28 U.S.C. 2675(a) will not accrue until 6 months after the filing of an amendment.

§ 1620.3 Administrative claim; who may file.

(a) A claim for damage to or loss of property may be presented by the owner of the property, or his or her authorized agent, attorney, or other legal representative.

(b) A claim for personal injury may be presented by the injured person, or his or her authorized agent, attorney or other legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert a claim under the applicable State law, provided that the basis for the representation is documented in writing.

(d) A claim for loss totally compensated by an insurer with the rights to subrogate may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights to subrogate may be presented by the insurer or the insured individually as their respective interests appear, or jointly. When an insurer presents a claim asserting the rights to subrogate the insurer must present appropriate evidence that it has the rights to subrogate.

(e) A claim presented by an agent or legal representative must be presented in the name of the claimant, be signed by the agent, attorney, or other legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his or her authority to present a claim on behalf of the claimant as agent, attorney, executor, administrator, parent, guardian, conservator, or other legal representative.

§ 1620.4 Investigations.

CSB may investigate, or may request any other Federal agency to investigate, a claim filed under this part.

§ 1620.5 Administrative claim; evidence and information to be submitted.

(a) *Death*. In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing

cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his or her monthly or yearly salary or earnings (if any), and the duration of his or her last employment or occupation.

(3) Full names, addresses, birth date, kinship and marital status of the decedent's survivors, including identification of those survivors who were dependent on support provided by the decedent at the time of death.

(4) Degree of support afforded by the decedent to each survivor dependent on him or her for support at the time of death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering before death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injuries and death.

(8) True and correct copies of relevant medical treatment records, laboratory and other tests, including X-Rays, MRI, CT scans and other objective evidence of medical evaluation and diagnosis, treatment of injury/illness, and prognosis, if any had been made.

(9) Any other evidence or information that may have a bearing on either the responsibility of the United States for the death or the amount of damages claimed.

(b) *Personal injury*. In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by the attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. If damages for pain and suffering are claimed, a physician's detailed statement specifying the duration of pain and suffering, a listing of drugs administered for pain, and the claimant's general physical condition.

(2) True and correct copies of relevant medical treatment records, laboratory and other tests including, X-Rays, MRI, CT scans and other objective evidence of medical evaluation and diagnosis, treatment injury/illness and prognosis.

(3) The claimant may be required to submit to a physical or mental examination by a physician employed by CSB or another Federal agency. On written request, CSB will make available to the claimant a copy of the report of the examining physician employed by the United States, provided the claimant has furnished CSB with the information noted in paragraphs (b)(1) and (b)(2) of this section. In addition, the claimant must have made or agrees to make available to CSB all other physicians' reports previously or thereafter made of the physical or mental condition that is subject matter of his or her claim.

(4) Itemized bills for medical, dental, and hospital expenses incurred, and/or itemized receipts of payment for such expenses.

(5) If the prognosis reveals the necessity for future treatment, a statement of the expected treatment and the expected expense for such treatment.

(6) If a claim is made for loss of time from employment, a written statement from his or her employer showing actual time lost from employment, whether he or she is a full-time or part-time employee, and wages or salary actually lost.

(7) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(8) Any other evidence or information that may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage*. In support of a claim for damage to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership of the property.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value.

(5) Photographs or video footage documenting the damage, including photographs showing the condition of the property at issue both before and after the alleged negligence or wrongful act or omission.

(6) Any other evidence or information that may have a bearing on either the responsibility of the United States for the damage to or loss of property or the damages claimed.

§ 1620.6 Authority to adjust, determine, compromise and settle.

The General Counsel of CSB, or his or her designee, is delegated authority to consider, ascertain, adjust, determine, compromise and settle claims under the provision of 28 U.S.C. 2672, and this part. The General Counsel, in his or her discretion, has the authority to further delegate the responsibility for adjudicating, considering, adjusting, compromising and settling any claim submitted under the provision of 28 U.S.C. 2672, and this part, that is based on the alleged negligence or wrongful act or omission of a CSB employee acting in the scope of their employment. However, in any case, any offer of compromise or settlement in excess of $5,000 exercised by the CSB Chairperson or any other lawful designee can only be made after a legal review is conducted by an attorney within the CSB Office of General Counsel.

§ 1620.7 Limitations on authority.

(a) An award, compromise, or settlement of a claim under 28 U.S.C. 2672, and this part, in excess of $25,000 can be made only with the prior written approval of the CSB General Counsel and Chairperson, after consultation and approval by the Department of Justice. For purposes of this paragraph a principal claim and any derivative or subrogated claim will be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised or settled under this part, only after consultation with the Department of Justice when, in the opinion of the General Counsel of CSB, or his or her designee:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and CSB is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised or settled under 28 U.S.C. 2672 and this part, only after consultation with the Department of Justice when CSB is informed or is otherwise aware that the United States or an employee, agent or contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 1620.8 Referral to Department of Justice.

When Department of Justice approval or consultation is required, or the advice of the Department of Justice is otherwise to be requested, under this regulation, the written referral or request will be transmitted to the Department of Justice by the General Counsel of CSB, or his or her designee.

§ 1620.9 Final denial of claim.

Final denial of an administrative claim must be in writing and sent to the claimant, his or her agent, attorney, or other legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial. However, it must include a statement that, if the claimant is dissatisfied with the CSB action, he or she may file suit in an appropriate United States District Court not later than 6 months after the date of mailing of the notifications, along with the admonition that failure to file within this 6 month timeframe could result in the suit being time-barred by the controlling statute of limitations. In the event that a claimant does not hear from the CSB after 6 months have passed from the date that the claim was presented, a claimant should consider the claim denied and, if desired, should proceed with filing a civil action in the appropriate U.S. District Court.

§ 1620.10 Action on approved claim.

(a) Payment of a claim approved under this part is contingent on claimant's execution of a Standard Form 95 (Claim for Damage, Injury or Death); a claims settlement agreement; and a Standard Form 1145 (Voucher for Payment), as well as any other forms as may be required. When a claimant is represented by an attorney, the Voucher for Payment will designate both the claimant and his or her attorney as payees, and the check will be delivered to the attorney, whose address is to appear on the Voucher for payment.

(b) Acceptance by the claimant, his or her agent, attorney, or legal representative, of an award, compromise or settlement made under 28 U.S.C. 2672 or 28 U.S.C. 2677 is final and conclusive on the claimant, his or her agent, attorney, or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and constitutes a complete release of any and all claims against the United States and against any employee of the Federal Government whose act(s) or omission(s) gave rise to the claim, by reason of the same subject matter. To that end, as noted above, the claimant, as well as any agent, attorney or other legal representative that represented the claimant during any phase of the process (if applicable) must execute a settlement agreement with the CSB prior to payment of any funds.

[FR Doc. 04–13711 Filed 6–16–04; 8:45 am]

BILLING CODE 6350–01–P

Notices

Federal Register
Vol. 69, No. 116
Thursday, June 17, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. FV–04–378]

Fruit and Vegetable Industry Advisory Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The purpose of this notice is to notify all interested parties that the Agricultural Marketing Service (AMS) will hold a Fruit and Vegetable Industry Advisory Committee (Committee) meeting that is open to the public. The U.S. Department of Agriculture (USDA) established the Committee to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the Secretary of Agriculture on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. This notice sets forth the schedule and location for the meeting.

DATES: Tuesday, July 13, 2004, from 8 a.m. to 5 p.m., and Wednesday, July 14, 2004, from 8 a.m. to 2 p.m.

ADDRESSES: The Committee meeting will be held at the Old Town Holiday Inn Select, 480 King Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Andrew Hatch, Marketing Specialist, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 2085–S, Stop 0235, Washington, DC 20250–0235. Telephone: (202) 690–0182. Facsimile: (202) 720–0016. E-mail: *andrew.hatch@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App.), the Secretary of Agriculture established the Committee in August 2001 to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the Secretary on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. The committee was rechartered in July 2003 and new members were appointed from industry nominations.

AMS Deputy Administrator for Fruit and Vegetable Programs, Robert C. Keeney, serves as the Committee's Executive Secretary and Andrew Hatch as the acting Designated Federal Official. Representatives from USDA mission areas and other government agencies affecting the fruit and vegetable industry will be called upon to participate in the Committee's meetings as determined by the Committee Chairperson. AMS is giving notice of the committee meeting to the public so that they may wish to attend and present their recommendations. The meeting is scheduled for Tuesday, July 13, 2004, from 8 a.m. to 5 p.m., and Wednesday, July 14, 2004, from 8 a.m. to 2 p.m., at the Old Town Holiday Inn Select, 480 King Street, Alexandria, Virginia 22314.

Topics to be discussed at the meeting will include: the organizational structure of the Perishable Agriculture Commodities Act Program, federal crop insurance programs, agricultural labor, and USDA programs that encourage increased consumption of fruits and vegetables.

Those parties that wish to speak at the meeting should register on or before July 2, 2004. To register as a speaker, please e-mail *andrew.hatch@usda.gov* or facsimile to (202) 720–0016.

Registrants should include their name, address, and daytime telephone number. Depending on the number of registered speakers, time limits may be imposed on speakers. Speakers who have registered in advance will be given priority.

If you require special accommodations, such as a sign language interpreter, please contact the person listed for **FOR FURTHER INFORMATION CONTACT**. The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting.

The Secretary of Agriculture has selected a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. Equal opportunity practices were considered in all appointments to the Committee in accordance with USDA policies.

Dated: June 10, 2004.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–13691 Filed 6–16–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Colville Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Colville Resource Advisory Committee will meet on Tuesday, June 29, 2004 at the Spokane Community College, Colville Campus, Dominion Room, 985 South Elm Street, Colville, Washington. The meeting will begin at 9 a.m. and conclude at 4 p.m. Agenda items include: (1) Introduction of New RAC members; (2), Discuss Budget expenses; (3) Bylaws and Charter Review; (4) Fiscal Year 2005 Title II projects review and recommendation to the forest designated official; and (5) Public Forum.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Rick Brazell, Designated Federal Official or to Cynthia Reichelt, Public Affairs Officer, Colville National Forest, 765 S. Main, Colville, Washington 99114, (509) 684–7000.

Dated: June 9, 2004.

Donald N. Gonzalez,

Ecosystem Planning and Monitoring Staff Offices, Colville National Forest.

[FR Doc. 04–13708 Filed 6–16–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Basin Electric Power Cooperative, Inc.; Notice of Intent To Prepare an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to prepare an environmental assessment.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture's Rural Development Utilities Programs, intends to prepare an environmental assessment (EA) in connection with possible impacts related to the construction and operation of a new gas-fired combustion turbine generation facility. The project is proposed by Basin Electric Power Cooperative, Inc. (Basin), of Bismarck, North Dakota. RUS may provide financing assistance for the project.

FOR FUTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone: (202) 720–1414 or e-mail: *nurul.islam@usda.gov.*; or Jim Berg, Basin at (701) 223–0441 or e-mail: *jberg@bepc.com.*

SUPPLEMENTARY INFORMATION: Basin is proposing to construct an 80 Megawatt simple-cycle gas turbine and is evaluating potential sites located in Brown and Deuel Counties, South Dakota. One site is located approximately 5 miles south of the town of Groton, in Brown County. A second potential site is located approximately 27 miles southeast of Watertown, in Deuel County. Depending on the site selected, associated facilities could include a gas pipeline, water pipeline and electric transmission facilities.

Comments regarding the proposed project may be submitted in writing no later than July 19, 2004, to RUS at the address provided above.

An environmental assessment (EA) will be prepared for the proposed project. Based on a review of the EA and other relevant information, RUS will determine if the preparation of an environmental impact statement is necessary. Should RUS determine that the preparation of an environmental impact statement is not necessary, it will prepare a Finding of No Significant Impact.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal, State, and local environmental laws and regulations and completion of the environmental review procedures as prescribed by 7 CFR Part 1794, Environmental Policies and Procedures.

Dated: June 8, 2004.

Glendon Deal,

Director, Engineering and Environmental Staff, Rural Utilities Service.

[FR Doc. 04–13692 Filed 6–16–04; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a conference call of the Connecticut Advisory Committee will convene at 10:30 a.m. and adjourn at 11:30 a.m., Thursday June 17, 2004. The purpose of the conference call is plan future projects.

This conference call is available to the public through the following call-in number: 1–800–923–4312, access number: 24429536. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number access code number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Barbara de La Viez of the Eastern Regional Office, 202–376–7533 (TTY 202–376–8116) by 4 p.m. on Wednesday, June 16, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated: June 7, 2004, Washington, DC.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–13720 Filed 6–16–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 21–2004]

Foreign-Trade Zone 70—Detroit, Michigan Application for Expansion; Correction

The **Federal Register** notice (69 FR 30872, 6/01/2004) describing the application by the Greater Detroit Foreign-Trade Zone, grantee of FTZ 70, requesting authority to expand its zone in the Detroit, Michigan, area, is corrected as follows:

Paragraph 5 should read ''The closing period for their receipt is August 2, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period (to August 17, 2004).''

Dated: June 10, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–13712 Filed 6–16–04; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–804, A–427–009, A–428–803, A–580–805, A–588–812, and A–570–802]

Industrial Nitrocellulose From Brazil, France, Germany, Korea, Japan, the People's Republic of China, and the United Kingdom: Notice of Preliminary Results of Changed Circumstances Review and Intent To Revoke Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of changed circumstances reviews and intent to revoke antidumping duty orders.

SUMMARY: The Department of Commerce is conducting changed circumstances reviews of the antidumping orders of industrial nitrocellulose from Brazil, France, Germany, Korea, Japan, the People's Republic of China, and the United Kingdom. The preliminary results of these reviews indicate that Green Tree Chemical Technologies (Green Tree), the sole U.S. producer of industrial nitrocellulose in the United States, has ceased production. Consequently, we have preliminarily determined to revoke the orders of industrial nitrocellulose from Brazil, Germany, Korea, Japan, the People's Republic of China, and the United Kingdom on July 1, 2003, which is the earliest date for which there are entries which have been subject to these administrative reviews. We have preliminarily determined to revoke the orders of industrial nitrocellulose from France effective August 1, 2003, which is the earliest date for which there are entries subject to that administrative review.

Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* June 17, 2004.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Enforcement Group III, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 2003, Nitro Quimica Brasileira (Nitro Quimica), requested that the Department revoke the antidumping duty order on industrial nitrocellulose from Brazil through a changed circumstances review. According to Nitro Quimica, revocation is warranted because of ''lack of interest'' on behalf of the U.S. industry. Specifically, Nitro Quimica asserts that no domestic producer of industrial nitrocellulose currently exists. Nitro Quimica contends that Hercules Incorporated, the only petitioner in the original investigation and the only U.S. producer at the time in which this order was issued, sold its nitrocellulose business to Green Tree on June 16, 2001. Nitro Quimica further contends that Green Tree closed its U.S. production facility on or about November 26, 2003. (*See* Nitro Quimica December 31, 2003 letter at Attachment 3.)

On February 12, 2004, Wolff Cellulosics GmbH (Wolff) asserted that the Department should revoke the order of industrial nitrocellulose from Germany because there is no U.S. producer of industrial nitrocellulose. Wolff argued that the Department should make revocation of the order of industrial nitrocellulose from Germany effective July 1, 2003, which is earliest date for which there are entries that have not yet been the subject of a completed administrative review. Wolff contended that Green Tree, the sole producer of the domestic like product, has ceased production and no longer maintains the capacity to produce industrial nitrocellulose. (*See* Wolff's February 12, 2004 letter at Exhibits A and B.) On February 25, 2004, the Department initiated a changed circumstances review with respect to the order of industrial nitrocellulose from Brazil (69 FR 8626, February 25, 2004).

On March 9, 2004, the Valspar Corporation (Valspar) requested that the Department revoke the antidumping duty orders on industrial nitrocellulose from France, Germany, Korea, Japan, the People's Republic of China, and the United Kingdom. Valspar asserts that cessation of production of the domestic like product constitutes ''lack of interest'' by the domestic industry in the continuation of the antidumping duty orders. (*See* Valspar's March 9, 2004 letter, at pages 1–2.)

On March 23, 2004, Bergerac N.C. and its affiliated U.S. importer SNPF North America, L.L.C. (collectively BNC) requested that the Department revoke the order on industrial nitrocellulose from France. BNC asserts that the cessation of production of the domestic like product constitutes ''lack of interest'' by the domestic industry in the order of industrial nitrocellulose from France.

On March 29, 2004, the Department initiated changed circumstances reviews of the antidumping orders of industrial nitrocellulose from France, Germany, Korea, Japan, the People's Republic of China, and the United Kingdom (69 FR 17643, April 5, 2004). On April 23, 2004, Wolff filed additional comments supporting its request for revocation of the order of industrial nitrocellulose from Germany.

On May 3, 2004, counsel for petitioner informed the Department that (1) Green Tree had located no buyer for its nitrocellulose production facility, (2) Green Tree did not anticipate finding such a buyer within the foreseeable future, and (3) Green Tree did not anticipate that either Green Tree or a successor-in-interest to Green Tree would resume production of industrial nitrocellulose within a determinable time frame. Accordingly, Green Tree acknowledged that it is no longer in a position to oppose revocation of the antidumping orders of industrial nitrocellulose from Brazil, France, Germany, Korea, Japan, the PRC, and United Kingdom. (*See* May 3, 2004 memorandum from Michael J. Heaney to the File.)

Based upon the information provided in Nitro Quimica's December 31, 2003 letter, Wolff's February 12, 2004 letter, Valspar's March 9, 2004 letter, and by counsel for Green Tree to the Department on May 3, 2004, the Department has preliminarily determined that changed circumstances exist which warrant revocation of the orders on industrial nitrocellulose from Brazil, France, Germany, Korea, Japan, the People's Republic of China, and the United Kingdom. If these preliminary results are confirmed in the final results of review, the Department intends to revoke the orders of industrial nitrocellulose from Brazil, Germany, Korea, Japan, the People's Republic of China, and the United Kingdom effective July 1, 2003. The Department further intends to revoke the order of industrial nitrocellulose from France effective August 1, 2003.

Scope of the Review

The product covered by this review is industrial nitrocellulose, currently classifiable under HTS subheading 3912.20.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Preliminary Results of Changed Circumstances Antidumping Duty Administrative Reviews

We have examined the information provided by Nitro Quimica, Wolff, Valspar, and counsel for Green Tree, and preliminarily determine that the sole U.S. producer of industrial nitrocellulose lacks interest in the relief provided by the orders, and thus, sufficient changed circumstances exist to warrant revocation of the orders. Pursuant to section 782(h)(2) of the Act, the Department may revoke an antidumping or countervailing duty order if it determines that producers accounting for substantially all production of the domestic like product have expressed a lack of interest in the order. Pursuant to Section 751(b)(1) of the Act and Section 351.222(g) of the regulations, the Department will conduct a changed circumstances review, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if other changed circumstances exist sufficient to warrant revocation. The Department's practice in cases where the only U.S. producers have ceased production is to make the date of the revocation effective with respect to any entries that have not yet been subject to an administrative review. *See,* e.g., *Coumarin from the People's Republic of China: Notice of Final Results of Changed Circumstances Review and Revocation of the Antidumping Order* (69 FR 24122, May 3, 2004), *Carbon-Quality Steel Plate Products from Japan: Notice of Final Results of Changed Circumstances Antidumping Administrative Review, and Determination to Revoke in Part* (68 FR 9975, March 3, 2003), *Large Newspaper Printing Presses and Components Thereof, Whether*

Assembled or Unassembled, from Germany: Notice of Final Results of Changed Circumstances Review, Revocation of the Antidumping Order, and Rescission of Administrative Reviews (67 FR 19551, April 22, 2002), and *Calcium Aluminate Flux from France: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review, Revocation of the Order, and Rescission of Antidumping Duty Review,* 63 FR 16966 (April 7, 1998). Based upon the foregoing, we preliminarily intend to revoke the antidumping orders on industrial nitrocellulose from Brazil, Germany, Korea, Japan, the People's Republic of China, and the United Kingdom effective July 1, 2003. The Department further intends to preliminarily revoke the order of industrial nitrocellulose from France effective August 1, 2003. (For the orders on industrial nitrocellulose from Brazil, Germany, Korea, Japan, the People's Republic of China, and the United Kingdom, July 1, 2003 is the earliest date with respect to which there are no entries subject to a completed administrative review. August 1, 2003 is the earliest date with respect to which there are no entries subject to a completed administrative review for industrial nitrocellulose from France.)

Interested parties may submit case briefs and/or written case briefs no later than 30 days after publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 5 days after the deadline for filing case briefs. The Department will publish the final results of this changed circumstances review, which will include the results of its analysis to raised in issues raised in any such written comments, no later than four months following the date of publication of this notice. Also, if our final results do not differ from our preliminary results with respect to revocation, in accordance with 19 CFR 351.222, we will instruct the U.S. Customs and Border Protection to terminate the suspension of liquidation and to liquidate without regard to antidumping duties all entries of industrial nitrocellulose from Brazil, Germany, Korea, Japan, the People's Republic of China, and the United Kingdom effective July 1, 2003, and all entires of industrial nitrocellulose from France effective August 1, 2003. This notice and intent to revoke are in accordance with section 751(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(b)(1)), and 19 CFR 351.216, 351.221, and 351.222.

Dated: June 4, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–13713 Filed 6–16–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 16, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Personnel Policy)/Accession Policy, ATTN: Major Ruth Hamilton, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call (703) 695–5527.

Title, Associated Form, and OMB Control: Request for Reference, DD Form 370, OMB Control Number: 0704–0167.

Needs and Uses: This information collection requirement is necessary to obtain personal reference data, in order to request a waiver, on a military applicant who has committed a civil or criminal offense and would otherwise be disqualified for entry to the Armed Forces of the United States. The DD Form 370 is used to obtain references information evaluating the character, work habits, and attitudes of an applicant from a person of authority or standing within the community.

Affected Public: Individuals or households, non-profit or other for profit businesses, non-profit institutions, local, tribal and state agencies. Normally, this form would be completed by responsible community leaders such as school officials, ministers and law enforcement officials.

Annual Burden Hours: 7,181.

Number of Respondents: 43,000.

Responses per Respondent: 1.

Average Burden per Response: .167 hour (10 minutes) per respondent.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information is collected to provide the Armed Services with specific background information on an applicant. History of criminal activity, arrests, or confinement is disqualifying for military service. An applicant, with such a disqualifier, is required to submit references from community leaders who will attest to his or her character, attitudes or work habits. The DD Form 370 is the method of information collection which requests an evaluation and reference from a specific individual, within the community, who has the knowledge of the applicant's habits, behaviors, personality and character. The information will be used to determine suitability of the applicant for military service and the issuance of a waiver for acceptance.

Dated: June 10, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–13613 Filed 6–16–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the

Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 16, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Personnel Policy)/Accession Policy, ATTN: Major Ruth Hamilton, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call (703) 695–5527.

Title, Associated Form, and OMB Control Number: ''Request for Verification of Birth,'' DD Form 372, OMB Control Number: 0704–0006.

Needs and Uses: Title 10, USC 505, 532, 3253, and 8253, require applicants meet minimum and maximum age and citizenship requirements for enlistment into the Armed Forces (including the Coast Guard). If an applicant is unable to provide a birth certificate, the recruiter will forward a DD Form 372, ''Request for Verification of Birth,'' to a state or local agency requesting verification of the applicant's birth date. This verification of the birth date ensures that the applicant does not fall outside the age limitations, and that the applicants place of birth supports the citizenship status claimed by the applicant.

Affected Public: State, Local or Tribal Government.

Annual Burden Hours: 8,300.

Number of Respondents: 100,000.

Responses per Respondent: 1.

Average Burden per Response: .083 hour (5 minutes) per respondent.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information provides the Armed Services with the exact birth date of an applicant. The DD Form 372 is the method of collecting and verifying birth data on applicants who are unable to provide a birth certificate from their city, county, or state. The DoD Form is considered the official request for obtaining the birth data on applicants.

Dated: June 10, 2004.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 04–13614 Filed 6–16–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Funding Availability for Advance Planning Grants—Request for Grant Proposals

AGENCY: Office of Economic Adjustment, DoD.

ACTION: Notice.

Announcement type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 12.614 Community Economic Adjustment Assistance for Advance Planning.

Key Dates: Proposals will be accepted and processed as received on a continuing basis commencing June 17, 2004.

Executive Summary: The Office of Economic Adjustment (OEA) is authorized by Section 2391(b)(5) of Title 10, United States Code, to award planning assistance in the form of Advance Planning Grants to State, regional governmental organizations or local governments whose economic activity or population is dependent on Defense expenditures. Receipt of such planning assistance cannot prejudice a community in the Defense Base Closure and Realignment process because Section 2903(c)(3)(B) of the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, provides that ''in considering military installations for closure or realignment, the Secretary may not take into account for any purpose any advance planning undertaken by an affected community with respect to anticipated closure or realignment of an installation.'' Assistance provided under this notice supports planning activities for community adjustment and economic diversification in response to local economic dependency on military, Department of Defense (DoD) civilian, or defense industry expenditures and can be used to support the preparation of: Diversification plans to lessen local economic dependency on Defense expenditures; local plans for organizing a community in response to a base closure or realignment; and/or preliminary strategies and schematic plans for the potential reuse or redevelopment of existing bases. Assistance may be provided to States, regional governmental organizations or local governments, or States on behalf of local governments that demonstrate this economic dependency. A local match of at least 10 percent of the total project cost will be required for awards under this notice.

I. Funding Opportunity Description

OEA is a DoD Field Activity authorized to make grants to assist State, regional governmental organizations or local governments in planning community adjustments and economic diversification if a substantial portion of the economic activity or population of a geographic area is dependent on Defense expenditures. Assistance provided under this notice supports planning activities for community adjustment and economic diversification in response to local economic dependency on military, DoD civilian, or defense industry expenditures, and can be used to support the preparation of: diversification plans to lessen local economic dependency on Defense expenditures; local plans for organizing a community in response to a base closure or realignment; and preliminary strategies and schematic plans for the potential reuse or redevelopment of existing bases. States, regional governmental organizations and local governments, or States on behalf of local governments are eligible applicants for assistance.

II. Award Information

One Advance planning Grant, up to $175,000, may be awarded per base-related locale under this notice. Applicants shall ensure not less than 10% of the total project costs are derived from non-Federal sources. OEA will notify applicants within 30 days of receipt of a proposal whether their proposal was successful and invite such successful applicants to submit an electronic grant (eGrant) application.

III. Eligibility Information

Eligible applicants are States, regional governmental organizations or local governments, or States on behalf of local governments. States applying on behalf of local governments shall include

evidence of support from elected officials of the local government.

Eligible activities include the preparation of: Community economic adjustment or diversification plans in response to a proponent area's dependence on defense spending; contingency plans to organize in the event of a base closure and realignment; and/or initial strategies and schematic plans for the potential reuse or redevelopment of existing bases.

Funds awarded under this notice shall not to be used for direct personnel costs apart from work directly related to the preparation of planning documents, as described above.

Applicants will be asked to certify, and a special condition of awards under this notice is, that any assistance provided under this notice shall not be used to directly or indirectly inform and/or influence deliberations under Public Law 101–510, as amended, of either the Department of Defense (including any of its components) and the Base Realignment and Closure (BRAC) Commission.

Receipt of planning assistance pursuant to this notice cannot prejudice a community in the Defense Base Closure and Realignment process because Section 2903(c)(3)(B) of the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, provides that ''in considering military installations for closure or realignment, the Secretary may not take into account for any purpose any advance planning undertaken by an affected community with respect to anticipated closure of realignment of an installation.''

IV. Application and Submission Information

Prospective applicants are advised that proposals will be accepted and processed as received on a continuing basis commencing June 27, 2004.

Each proposal submitted should include a cover or transmittal letter and accompanying text that shall consist of no more than six (6) pages (single-sided) which must include:

- A summary description of the community's defense dependency, including a statement of direct defense employment as a share of regional total employment and as a share of recent annual changes in regional total employment;
- A summary of the need, problem, or issue the project will address;
- A description of how the proponent intends to carry out the work required to resolve the situation identified;
- A proposed budget and accompanying explanation;
- A project schedule for completion of the work; and,
- A local point of contact.

Proposals may be either mailed or hand-delivered to: Director, Office of Economic Adjustment, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704, or they can be faxed to the Office of Economic Adjustment at (703) 604–5460.

V. Application Review Information

1. Selection Criteria—Upon validating the level of economic dependence on military, DoD civilian, and defense industry employment, OEA considers each of the following equally balanced factors as a basis for inviting formal grant applications:

- An appropriate and clear project design to address the need, problem, or issue identified;
- The innovative quality of the proposed approach to advance planning, economic adjustment, or economic diversification; and,
- a reasonable proposed budget and schedule for completion of the work program specified.

2. Review and Selection Process—All proposals will be reviewed on their individual merit by a panel of OEA staff, all of whom will be Federal employees. OEA will notify the applicant within thirty (30) days of receipt of a proposal whether their proposal was successful and invite the successful applicant to submit an electronic grant (eGrant) application. The Director, OEA, will assign a Project Manager to advise and assist successful applicants in the preparation of the application. Grant applications will be reviewed for their completeness and accuracy and a grant award notification, to the extent possible, will be issued within seven (7) business days.

VI. Award Administration Information

1. Award Notices—A successful applicant (Grantee) will receive a notice of award in the form of a Grant Agreement, signed by the Director, OEA (Grantor), on behalf of the Department of Defense. The Grant Agreement will be transmitted electronically or, if necessary, by U.S. Mail.

2. Administrative and National Policy Requirements—The Grantee and any consultant/contractor operating under the terms of a grant shall comply with all Federal, State, and local laws applicable to its activities including the following: 32 CFR Part 33, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments''; OMB Circulars A–87, ''Cost Principles for State and Local Governments'' and the revised A–133, ''Audits of States, Local Governments and Non-Profit Organizations''; 32 CFR Part 25, ''Government-wide Debarment and Suspension (Non-procurement)''; 32 CFR Part 26, ''Drug-free Workplace''; and 32 CFR Part 28, ''New Restrictions on Lobbying (Grants).''

3. Reporting—OEA requires quarterly performance reports and one final performance report for any grant. The performance reports will contain information on the following:

- A comparison of actual accomplishments to the objectives established for the period;
- reasons for slippage if established objectives were not met;
- additional pertinent information when appropriate;
- a comparison of actual and projected quarterly expenditures in the grant; and,
- the amount of Federal cash on hand at the beginning and end of the reporting period.

The final performance report must contain a summary of activaities for the entire grant period. All required deliverables should be submitted with the final performance report. The final SF 269A, ''Financial Status Report,'' must be submitted to OEA within 90 days after the end of the grant. Any grant funds actually advanced and not needed for grant purposes shall be returned imemdiately to OEA.

OEA will provide a schedule for reporting periods and report due dates in the Grant Agreement.

VII. Agency Contacts

For further information, to answer questions, or for help with problems, contact: David Larson, Deputy Director, Office of Economic Development, telephone: (703) 604–4828, fax: (703) 604–5460, e-mail: *david.larson@osd.mil* or regular mail at 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704.

VIII. Other Information

The Office of Economic Adjustment Internet address is *http://www/oea.gov*.

Dated: June 10, 2004.

L.M. Bynum,

Alternate OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 04–13612 Filed 6–16–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 19, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Alice Thaler, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 10, 2004.

Joseph Schubart,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Free Application for Federal Student Aid (FAFSA).

Frequency: Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 14,762.847.

Burden Hours: 7,624.153.

Abstract: Collects identifying and financial information from students applying for Federal student aid for postsecondary education. Used to calculate Expected Family Contribution and determine eligibility for grants and loans, under Title IV of the HEA.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2569. When you access the information collection, click on ''Download Attachments''—to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, D.C. 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *Joe Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–13651 Filed 6–16–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 19, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Alice Thaler, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 9, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: Revision.

Title: National Longitudinal Study of No Child Left Behind—Data Collection Instruments.

Frequency: Fall 2004, Fall 2006.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; individuals or household, businesses or other for-profit.

Reporting and Recordkeeping Hour Burden

Responses: 29,588.

Burden Hours: 26,807.

Abstract: This study will examine the implementation of No Child Left Behind Act provisions for Title I and Title II in a nationally-representative sample of schools and districts during the 2004–05 and 2006–07 school years. The study will include four components focused on particular provisions of the law: (1) Accountability; (2) teacher quality; (3) parental choice; and (4) targeting and resource allocation. This clearance package is for the data collection instruments; the study design was previously approved on March 16, 2004 (OMB#1875–0227).

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the

''Browse Pending Collections'' link and by clicking on link number 2562. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–13652 Filed 6–16–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 19, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Alice Thaler, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 10, 2004.

Joseph Schubart,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: The Evaluation of Exchange, Language, International Area Studies (EELIAS) (NRC) Program (84.015A), (FLAS) Program (84.015B), (IIPP) Program (84.269), (UISFL) Program (84.016), (BIE) Program (84.153), (CIBE) Program (84.220), (AORC) Program (84.274), (LRC) Program (84.229), (IRS) Program (84.017), (FRA) Program (84.019), (DDRA) Program (84.022), (SA) Program (84.018), (GPA) Program (84.021), and (TICFIA) Program (84.337) (JS).

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 2,815.

Burden Hours: 23,511.

Abstract: International Education Programs Service (IEPS) requests the approval of EELIAS. This information collection will assist IEPS in meeting program planning and evaluation requirements. Program Officers require performance information to justify continuation funding, and grantees use this information for self evaluations and to request continued funding from the Department of Education.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2500. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, D.C. 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *Joe Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–13653 Filed 6–16–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of revision of the Federal need analysis methodology for the 2005–2006 award year.

SUMMARY: The Secretary of Education announces the annual updates to the tables that will be used in the statutory ''Federal Need Analysis Methodology'' to determine a student's expected family contribution (EFC) for award year 2005–2006 under Part F of Title IV of the Higher Education Act of 1965 (HEA), as amended (Title IV, HEA Programs). An EFC is the amount a student and his or her family may reasonably be expected to contribute toward the student's postsecondary educational costs for purposes of determining financial aid eligibility. The Title IV, HEA Programs include the Federal Pell Grant, campus-based (Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs), Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs.

FOR FURTHER INFORMATION CONTACT: Ms. Marya Dennis, Management and Program Analyst, U.S. Department of Education, Union Center Plaza, 830 First Street, NE., Washington, DC 20202. Telephone: (202) 377–3385. 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: Part F of Title IV of the HEA specifies the criteria, data elements, calculations, and tables used in the Federal Need Analysis Methodology EFC calculations.

Section 478 of Part F of the HEA requires the Secretary to adjust four of the tables—the Income Protection Allowance, the Adjusted Net Worth of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment Schedules and Rates—each award year to take into account inflation. The changes are based, in general, upon increases in the Consumer Price Index.

For the award year 2005–2006 the Secretary is charged with updating the income protection allowance, adjusted net worth of a business or farm, and the assessment schedules and rates to account for inflation that took place between December 2003 and December 2004. However, since the Secretary must publish these tables before December 2004, the increases in the tables must be based upon a percentage equal to the estimated percentage increase in the Consumer Price Index for all Urban Consumers for 2003. The Secretary estimates that the increase in the Consumer Price Index for all Urban Consumers for the period December 2003 through December 2004 will be 1.5 percent. The updated tables are in sections 1, 2, and 4 of this notice.

The Secretary must also revise, for each award year, the table on asset protection allowance as provided for in section 478(d) of the HEA. The Education Savings and Asset Protection Allowance table for the award year 2005–2006 has been updated in section 3 of this notice.

Section 478(h) of Part F of the HEA also requires the Secretary to increase the amount specified for the Employment Expense Allowance to account for inflation based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-worker compared to a one-worker family for meals away from home, apparel and upkeep, transportation, and housekeeping services. However, the Secretary has determined that the magnitude of the marginal differences in the applicable employment expenses adjusted for inflation does not support increasing the amount of the Employment Expense Allowance. Furthermore, because the statute does not provide for a reduction in this allowance, it will remain the lesser of $3,000 or 35% of earned income for the 2005–2006 award year.

The HEA provides for the following annual updates:

1. *Income Protection Allowance.* This allowance is the amount of living expenses associated with the maintenance of an individual or family that may be offset against the family's income. It varies by family size. The income protection allowance for the dependent student is $2,440. The income protection allowances for parents of dependent students and independent students with dependents other than a spouse for award year 2005–2006 are:

Family size	Number in college				
	1	2	3	4	5
2	$13,870	$11,490			
3	17,270	14,910	$12,530		
4	21,330	18,950	16,590	$14,220	
5	25,160	22,790	20,430	18,060	$15,700
6	29,430	27,060	24,700	22,330	19,970

For each additional family member add $3,320.

For each additional college student subtract $2,360.

The income protection allowances for single independent students and independent students without dependents other than a spouse for award year 2005–2006 are:

Marital status	Number in college	IPA
Single	1	$5,560
Married	2	5,560
Married	1	8,890

2. *Adjusted Net Worth (NW) of a Business or Farm.* A portion of the full net value of a farm or business is excluded from the calculation of an expected contribution since—(1) the income produced from these assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for parents of dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

If the net worth of a business or farm is—	Then the adjusted net worth is—
Less than $1	$0
$1 to $100,000	$0 + 40% of NW
$100,001 to $295,000	$40,000 + 50% of NW over $100,000
$295,001 to $495,000	$137,500 + 60% of NW over $295,000
$495,001 or more	$257,500 + 100% of NW over $495,000

3. *Education Savings and Asset Protection Allowance.* This allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables—one for parents of dependent students, one for independent students without dependents other than a spouse, and one for independent students with dependents other than a spouse.

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Dependent Students		
If the age of the older parent is	And there are	
	two parents	one parent
	then the education savings and asset protection allowance is--	
25 or less	0	0
26	2,200	900
27	4,400	1,800
28	6,700	2,700
29	8,900	3,500
30	11,100	4,400
31	13,300	5,300
32	15,500	6,200
33	17,800	7,100
34	20,000	8,000
35	22,200	8,900
36	24,400	9,800
37	26,600	10,600
38	28,900	11,500
39	31,100	12,400
40	33,300	13,300
41	34,100	13,600
42	35,000	13,900
43	35,900	14,200
44	36,700	14,500
45	37,700	14,800
46	38,600	15,200
47	39,600	15,500
48	40,500	15,900
49	41,500	16,200
50	42,800	16,600
51	43,900	17,000
52	44,900	17,400
53	46,300	17,800
54	47,400	18,300
55	48,900	18,700
56	50,000	19,100
57	51,500	19,700
58	53,100	20,100
59	54,600	20,700
60	56,200	21,200
61	57,800	21,800
62	59,500	22,400
63	61,500	23,000
64	63,300	23,700
65 or older	65,400	24,300

Independent Students Without Dependents Other Than A Spouse		
If the age of the student is	And they are	
	married	single
	then the education savings and asset protection allowance is--	
25 or less	0	0
26	2,200	900
27	4,400	1,800
28	6,700	2,700
29	8,900	3,500
30	11,100	4,400
31	13,300	5,300
32	15,500	6,200
33	17,800	7,100
34	20,000	8,000
35	22,200	8,900
36	24,400	9,800
37	26,600	10,600
38	28,900	11,500
39	31,100	12,400
40	33,300	13,300
41	34,100	13,600
42	35,000	13,900
43	35,900	14,200
44	36,700	14,500
45	37,700	14,800
46	38,600	15,200
47	39,600	15,500
48	40,500	15,900
49	41,500	16,200
50	42,800	16,600
51	43,900	17,000
52	44,900	17,400
53	46,300	17,800
54	47,400	18,300
55	48,900	18,700
56	50,000	19,100
57	51,500	19,700
58	53,100	20,100
59	54,600	20,700
60	56,200	21,200
61	57,800	21,800
62	59,500	22,400
63	61,500	23,000
64	63,300	23,700
65 or older	65,400	24,300

Independent Students With Dependents Other Than A Spouse		
	And they are	
	married	single
If the age of the student is	then the education savings and asset protection allowance is--	
25 or less	0	0
26	2,200	900
27	4,400	1,800
28	6,700	2,700
29	8,900	3,500
30	11,100	4,400
31	13,300	5,300
32	15,500	6,200
33	17,800	7,100
34	20,000	8,000
35	22,200	8,900
36	24,400	9,800
37	26,600	10,600
38	28,900	11,500
39	31,100	12,400
40	33,300	13,300
41	34,100	13,600
42	35,000	13,900
43	35,900	14,200
44	36,700	14,500
45	37,700	14,800
46	38,600	15,200
47	39,600	15,500
48	40,500	15,900
49	41,500	16,200
50	42,800	16,600
51	43,900	17,000
52	44,900	17,400
53	46,300	17,800
54	47,400	18,300
55	48,900	18,700
56	50,000	19,100
57	51,500	19,700
58	53,100	20,100
59	54,600	20,700
60	56,200	21,200
61	57,800	21,800
62	59,500	22,400
63	61,500	23,000
64	63,300	23,700
65 or older	65,400	24,300

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4. *Assessment Schedules and Rates.* Two schedules that are subject to updates, one for parents of dependent students and one for independent

students with dependents other than a spouse, are used to determine the expected contribution toward educational expenses from family financial resources. For dependent students, the expected parental contribution is derived from an assessment of the parents adjusted available income (AAI). For independent students with dependents other than a spouse, the expected contribution is derived from an assessment of the family's AAI. The AAI represents a measure of a family's financial strength, which considers both income and assets.

The parents' contribution for a dependent student is computed according to the following schedule:

If AAI is—	Then the contribution is—
Less than–$3,409	–$750
($3,409) to $12,400	22% of AAI
$12,401 to $15,600	$2,728 + 25% of AAI over $12,400
$15,601 to $18,700	$3,528 + 29% of AAI over $15,600
$18,701 to $21,900	$4,427 + 34% of AAI over $18,700
$21,901 to $25,000	$5,515 + 40% of AAI over $21,900
$25,001 or more	$6,755 + 47% of AAI over $25,000

The contribution for an independent student with dependents other than a spouse is computed according to the following schedule:

If AAI is—	Then the contribution is—
Less than –$3,409	–$750
($3,409) to $12,400	22% of AAI
$12,401 to $15,600	$2,728 + 25% of AAI over $12,400
$15,601 to $18,700	$3,528 + 29% of AAI over $15,600
$18,701 to $21,900	$4,427 + 34% of AAI over $18,700
$21,901 to $25,000	$5,515 + 40% of AAI over $21,900
$25,001 or more	$6,755 + 47% of AAI over $25,000

5. *Employment Expense Allowance.* This allowance for employment-related expenses, which is used for the parents of dependent students and for married independent students, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for a two-worker family compared to a one-worker family for meals away from home, apparel and upkeep, transportation, and housekeeping services.

The employment expense allowance for parents of dependent students, married independent students without dependents other than a spouse, and independent students with dependents other than a spouse is the lesser of $3,000 or 35 percent of earned income.

6. *Allowance for State and Other Taxes.* This allowance for State and other taxes protects a portion of the parents' and student's income from being considered available for postsecondary educational expenses. There are four tables for State and other taxes, one each for parents of dependent students, independent students with dependents other than a spouse, dependent students, and independent students without dependents other than a spouse.

The Secretary is delaying publication of these four tables in order to complete a thorough review of the available information from the Statistics of Income file data maintained by the Internal Revenue Service. Section 478(g) of Part F of the HEA directs the Secretary to update the tables for State and other taxes after reviewing the Statistics of Income file data. Also, a provision in the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), directs the Advisory Committee on Student Financial Assistance to examine the efficiency, effectiveness and fairness of the current procedures to update formula offsets and allowances. The Secretary will consider the preliminary findings of this analysis as he reviews the Statistics of Income file data.

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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.

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.268 William D. Ford Federal Direct Loan Program)

Dated: June 14, 2004.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 04–13722 Filed 6–16–04; 8:45 am]

BILLING CODE 4000–01–C

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notices

AGENCY: Election Assistance Commission.

DATE AND TIME: Monday, June 28, 2004, at 12 Noon.

PLACE: Sheraton Suites Houston, 2400 West Loop South, Houston, TX 77027.

NAME: U.S. Election Assistance Commission Board of Advisors.

STATUS: The board meeting is open to the public depending on available space.

PURPOSE:

Organizational plans for the newly established U.S. Election Assistance Commission (EAC) Board of Advisors. As required by the Help America Vote Act of 2002, the Board will present its views on issues in the administration of Federal elections, and formulate recommendations to the EAC.

Under 41 CFR 102–3.150(b), the EAC finds that exceptional circumstances require less than fifteen days notice of this meeting. Specifically, given the pendency of the general election, and given public comments and testimony suggesting heightened urgency with regard to the issues on which the Board of Advisors will advise the EAC, the EAC concludes that the impact on the timely accomplishment of the agency's mission and the financial implications that would result from delaying the meeting justify shortened notice in this case.

Any member of the public may file a written statement with the Board before, during, or after the meeting. To the extent that time permits, the Board may allow public presentation or oral statements at the meeting.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone: (2202) 566–3100.

Gracia M. Hillman,

Vice-Chair, Election Assistance Commission.

[FR Doc. 04–13796 Filed 6–15–04; 1:21 pm]

BILLING CODE 6820–MP–M

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notices

AGENCY: Election Assistance Commission.

* * * * *

DATE AND TIME: *Tuesday, June 29, 2004, at 9 a.m.*

PLACE: Sheraton Suites Houston, 2400 West Loop South, Houston, TX 77027.

NAME: U.S. Election Assistance Commission Standards Board.

STATUS: The board meeting is open to the public depending on available space.

PURPOSE: Organizational plans for the newly established U.S. Election Assistance Commission (EAC) Standards Board. As required by the Help America Vote Act of 2002, the Board will present its views on issues in the administration of Federal elections, and formulate recommendations to the EAC.

Under 41 CFR 102–3.150(b), the EAC finds that exceptional circumstances require less than fifteen days notice of this meeting. Specifically, given the pendency of the general election, and given public comments and testimony suggesting heightened urgency with regard to the issues on which the Standards Board will advise the EAC, the EAC concludes that the impact on the timely accomplishment of the agency's mission and the financial implications that would result from delaying the meeting justify shortened notice in this case.

Any member of the public may file a written statement with the Board before, during, or after the meeting. To the extent that time permits, the Board may allow public presentation or oral statements at the meeting.

* * * * *

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone: (202) 566–3100.

Gracia M. Hillman,

Vice-Chair, Election Assistance Commission.

[FR Doc. 04–13797 Filed 6–15–04; 1:21 pm]

BILLING CODE 6820–MP–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–114]

ANR Pipeline Company; Notice Of Negotiated Rate Filing

June 8, 2004.

Take notice that on June 2, 2004, ANR Pipeline Company (ANR) tendered for filing and approval an amendment to a Service Agreement between ANR and CoEnergy Trading Company, which adds discounted secondary points to the agreement.

ANR states that copies of the filing has been mailed to each of ANR's customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1347 Filed 6–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–54–001]

ANR Storage Company; Notice of Compliance Filing

June 9, 2004.

Take notice that on May 28, 2004, ANR Storage Company (ANR Storage) tendered for filing, as part of its FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 2, the following tariff sheets proposed to become effective April 1, 2004:

Original Volume No. 1

Second Revised Sheet No. 1A

Original Volume No. 2

Fifth Revised Sheet No. 1
First Revised Sheet No. 229

ANR Storage states that the above-referenced tariff sheets are being filed to cancel ANR Storage's Rate Schedule X–11 as approved by Commission order issued on March 3, 2004.

ANR Storage states that copies of its filing have been mailed to each of its customers and affected state regulatory 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1352 Filed 6–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–346–000]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Request Under Blanket Authorization

June 10, 2004.

Take notice that on June 1, 2004, and supplemented on June 4, 2004, CenterPoint Energy—Mississippi River Transmission Corporation (MRT), P.O. Box 21734, Shreveport, LA 71151–1734, filed in Docket No. CP04–346–000 a request pursuant to its blanket certificate issued September 29, 1982 under Docket No. CP82–489–000 for authority under Sections 157.208 and 157.211 of the Commission's Regulations (18 CFR 157.208 and 157.211) to construct and operate certain pipeline facilities in Madison and St. Clair Counties, Illinois.

MRT's existing customer, Union Electric Company—AmerenUE (AmerenUE), has advised MRT that it is installing two additional natural gas turbines for electric generation at its Venice Power Plant in Venice Illinois. AmerenUE has requested MRT to provide firm transportation service to serve the expanded plant. MRT's existing lateral line that serves the Venice Power Plant, Line A–122, is a low-pressure line that is not capable of delivering the additional requested volumes. MRT proposes to construct, own and operate a new delivery lateral (Line A–334); a new measurement station; and a new compressor station (the horseshoe Lake Compressor Station). The new Line A-334 will consist of approximately 3.6 miles of 20-inch pipe and allow deliveries up to 134,000 Dth per day. MRT's total construction costs are estimated at $18,016,755. The application is on file with the Commission and open to public inspection.

Any questions regarding this application should be directed to Lawrence O. Thomas, Director-Rates & Regulatory, CenterPoint Energy—Mississippi River Transmission Corporation, P.O. Box 21734, Shreveport, Louisiana 71101, at (318) 429–2804.

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 *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests, comments and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages interveners 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 therefore, 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1349 Filed 6–17–04; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–846–000]

EnerNOC, Inc.; Notice of Issuance of Order

June 10, 2004.

EnerNOC, Inc. (EnerNOC) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provides for wholesale sales of capacity, energy and ancillary services at market-based rates. EnerNOC also requested waiver of various Commission regulations. In particular, EnerNOC requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by EnerNOC.

On June 8, 2004, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EnerNOC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, is July 8, 2004.

Absent a request to be heard in opposition by the deadline above, EnerNOC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of EnerNOC, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EnerNOC's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the

docket number excluding the last three digits in the docket number filed to access the document. 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1354 Filed 6–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL04–105–000 and ER04–742–000]

PJM Interconnection, L.L.C.; Notice of Initiation of Proceeding and Refund Effective Date

June 9, 2004.

Take notice that on May 28, 2004, the Commission issued an order, as revised by an Errata Notice issued June 9, 2004, in the above-referenced dockets initiating an investigation in Docket No. EL04–105–000 under section 206 of the Federal Power Act to determine whether PJM's existing process for allocating Financial Transmission Rights and Auction Revenue Rights is unduly preferential.

The refund effective date in Docket No. EL04–105–000, established pursuant to section 206(b) of the Federal Power Act, will be 60 days from the date this notice is published in the **Federal Register.**

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1353 Filed 6–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–348–000]

Southern Natural Gas Company; Notice of Application

June 10, 2004.

Take notice that on June 2, 2004, Southern Natural Gas Company (Southern) located at 1900 Fifth Avenue North, Birmingham, Alabama 35203, filed, in Docket No. CP04–348–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and Part 157 of the Commission regulations, for authorization to abandon certain Southern natural gas pipeline facilities, located in Shelby County, Texas and DeSoto Parish, Louisiana, by sale to Dominion Gas Ventures, Inc. (Dominion) and for authorization to abandon Southern's gathering service. Southern also requests that the Commission declare that the subject Logansport Gathering System will be considered non-jurisdictional gathering facilities under section 1(b) of the NGA upon closing of the sale to Dominion, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Southern states that this filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to John C. Griffin, Senior Counsel, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563 or phone (205) 325–713.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests, comments and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: July 1, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1350 Filed 6–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–345–000]

Cheyenne Plains Gas Pipeline Company, L.L.C.; Notice Of Intent To Prepare an Environmental Assessment For The Proposed Cheyenne Plains 2005 Expansion Project And Request for Comments On Environmental Issues

June 9, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Cheyenne Plains 2005 Expansion Project involving construction and operation of facilities by Cheyenne Plains Gas Pipeline Company, L.L.C. (CPG) in Weld County, Colorado.[1] These facilities would consist of 10,310 horsepower (hp) of compression and appurtenant facilities for connection. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a

[1] CPG's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice CPG provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.gov).

Summary of the Proposed Project

CPG proposes to add 10,310 hp of compression at the 20,320-hp Cheyenne Plains Compressor Station currently under construction to deliver an additional 170,000 decatherms per day (Dth/d) of natural gas (increased from 560,000 Dth/d to 730,000 Dth/d).

The location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 7 acres of land. Following construction, about 4 acres would be maintained as a new aboveground facility site on previously disturbed land within the Cheyenne Plains Compressor Station.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Air quality and noise

We will not discuss impacts to the following resource areas since they are not present in the project area, or would not be affected by the proposed facilities.

- Water resources, fisheries, and wetlands

Further, since the addition of compression would be at a station currently under construction and which has been reviewed and cleared for the following issues, they will not be discussed:

- Geology and soils
- Land use
- Cultural resources
- Vegetation and wildlife
- Endangered and threatened species
- Hazardous waste
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified noise impact as an issue that we think deserves attention based on a preliminary review of the proposed facilities and the environmental information provided by CPG. This preliminary issue may be changed based on your comments and our analysis.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP04–345–000.
- Mail your comments so that they will be received in Washington, DC on or before July 13, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's website at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov.*

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1348 Filed 6–17–04; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–47–000, CP04–37–000, PF04–01–000, PF04–03–000, PF04–9–000, and PF04–11–000]

Sabine Pass LNG, L.P., Corpus Christi LNG, L.P., Golden Pass LNG Terminal L.P., Vista del Sol LNG Terminal Management LLC, Ingle Side Energy Center LLC, Sempra Port Arthur LNG; Notice of Site Visit and Technical Conference

June 9, 2004.

On Tuesday June 22, 2004, staff of the Office of Energy Projects (OEP) will conduct a visit to the sites of Sabine Pass, Golden Pass, and Port Arthur LNG. On Wednesday, June 23, 2004, the staff of the OEP will conduct another visit to the sites of Corpus Christi, Vista del Sol, and Ingle Side LNG. All six sites will be open to the public. Anyone interested in participating should meet at the entrance of the sites at the specified dates above. Tuesday's site visit will commence at approximately 2 p.m., (c.s.t.) and Wednesday's at 11 a.m. (c.s.t.). It is requested that each company listed above provide access to the sites. For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC (3372).

On Thursday June 24, 2004, OEP will convene a cryogenic design and technical conference of the two proposed Sabine Pass and Corpus Christi LNG import terminals and storage facilities in Houston, Texas. The cryogenic conference will begin at 9 a.m. (c.s.t.) on June 24, 2004, at the InterContinental Houston, Texas Hotel. In view of the nature of security issues to be explored, the cryogenic conference will not be open to the public. Attendance at the conference will be limited to existing parties to the proceeding in Dockets CP04–37–000 and CP04–47–000 (anyone who has specifically requested to intervene as a party) and to representatives of interested Federal, State and local agencies. Any person planning to attend the June 24, conference must notify the Office of General Counsel, Carolyn Vanderjagt (Corpus Christi) at (202) 502–8620, or Jacqueline Holmes (Sabine Pass) at (202) 502–8198 by 12 noon on June 23, 2004, and must sign a non-disclosure statement prior to admission.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1351 Filed 6–16–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7774–3]

EPA Science Advisory Board Staff Office; Annual Request for Nomination of Members for the EPA Science Advisory Board, Clean Air Scientific Advisory Committee, and the Advisory Council on Clean Air Compliance Analysis

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's Science Advisory Board (SAB) Staff Office is soliciting nominations for Members to serve on the EPA Science Advisory Board (SAB), the Clean Air Scientific Advisory Committee (CASAC), and the Advisory Council on Clean Air Compliance Analysis (COUNCIL). Individuals responding to this annual request for nominations will be considered for membership vacancies on these three Congressionally mandated Federal advisory committees. This process supplements other efforts to identify qualified candidates.

DATES: Nominations should be submitted in time to arrive no later than July 19, 2004.

FOR FURTHER INFORMATION CONTACT: To submit a hard copy of the form noted below (for those unable to submit the information in electronic form), please contact Ms. Patricia L. Thomas, U.S. EPA SAB Staff Office (Mail Code 1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (FedEx/Courier address: U.S. EPA SAB, Suite 3600, 1025 F Street, NW., Washington DC 20004), (202) 343–9974 (tel.), (202) 233–0643 (fax), or via email at *thomas.patricial@epa.gov.*

For general information on the nomination process, see the SAB Staff Office report entitled, ''Implementation Plan for the New Structural Organization of the Science Advisory Board'' on the SAB Web Site at: *http://www.epa.gov/sab/pdf/sab04002.pdf.* Specific inquiries regarding the nomination process can be directed to

Dr. Anthony Maciorowski, Associate Director for Science, U.S. EPA SAB Staff Office, (202) 343–9983 (tel.), or via email at: *maciorowski.anthony@epa.gov*.

Background: The SAB (42 U.S.C. 4365), CASAC (42 U.S.C. 7409) and COUNCIL (42 U.S.C. 7612) are chartered Federal Advisory Committees that report directly to the EPA Administrator. The mission of these Federal advisory committees, as established by statute, is to provide independent scientific and technical peer review advice, consultation, and recommendations to the EPA Administrator on the technical bases for EPA actions. Additional information about these Federal Advisory Committees can be obtained on the SAB Web Site at: *http://www.epa.gov/sab.*

Expertise Sought: The SAB Staff Office is seeking nominations for nationally and internationally recognized non-EPA scientists, engineers, economists, and social scientists with demonstrated research and applied scientific experience and expertise in various disciplinary areas that address ecological and/or environmental/public health challenges, a multitude of stressors (*e.g.*, physical, biological and chemical agents and mixtures) impacting environmental media (*e.g.*, air, water, land), monitoring and characterizing sources of pollution, assessing risk to ecosystem and/or human health, prevention and risk management technologies, risk communication, environmental data quality, assessing environmental social economic values and cost-benefit analyses.

The selected experts will be considered for public service on the CASAC, COUNCIL, or the SAB and its subcommittees (including the Drinking Water Committee, Ecological Processes and Effects Committee, Environmental Economics Advisory Committee, Environmental Engineering Committee, Environmental Health Committee, Integrated Human Exposure Committee, and Radiation Advisory Committee).

How to Apply: Any interested person or organization may nominate qualified persons to serve on the CASAC, COUNCIL, or SAB. Individuals may self-nominate. Nominees should be qualified by scientific education, training, and experience to evaluate scientific, engineering and/or economics information on issues referred to and addressed by the committees. Successful nominees have distinguished themselves professionally and should be available to invest the time and effort to advance the cause of the supporting the use of good science through the efforts of the SAB. Nominations should be submitted in electronic format (which is preferred over hard copy) through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board provided on the SAB Web site. The form can be accessed through a link on the blue navigational bar on the SAB Web site at: *http://www.epa.gov/sab*. To be considered, all nominations should include the information requested on that form.

The nominating form requests contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's resume; and a general biosketch of the nominee indicating education, expertise, past research, recent service on other advisory committees or with professional associations, and recent grant and/or contract support. Persons who are unable to submit nominations through the SAB Web site should contact Ms. Patricia L. Thomas, as indicated above in this notice. Non-electronic submissions must follow the same format and contain the same information as the electronic form. The SAB Staff Office will acknowledge receipt of nominations.

The SAB Staff Office seeks the inclusion of nominees who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the issues facing the Agency. Specific criteria to be used in evaluating potential Members include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

During the selection process, nominees will be required to submit the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities as a Special Government Employee and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf.* This form should not be submitted as part of a nomination.

Dated: June 10, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–13687 Filed 6–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0099; FRL–7364–5]

Forum on State and Tribal Toxics Action; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the meeting of the Forum on State and Tribal Toxics Action (FOSTTA) to collaborate on environmental protection and pollution prevention issues. Representatives and invited guests of the Tribal Affairs Project (TAP), a component of FOSTTA, will be meeting June 29–30, 2004. The meeting is being held to provide the participants an opportunity to have in-depth discussions on issues concerning the environment and human health. This notice announces the location and times for the meeting and sets forth some tentative agenda topics. EPA invites all interested parties to attend the public meeting. The Chemical Information and Management Project (CIMP) and Pollution Prevention Project (P2) will not be holding meetings in June.

DATES: The project will meet on June 29, 2004, from 8:30 a.m. to 5 p.m., and June 30, 2004, from 8:30 a.m. to 4 p.m.

Requests to participate in the meeting, identified by docket ID number OPPT–2004–0099, must be received on or before June 25, 2004.

ADDRESSES: The meeting will be held at the Hilton Albuquerque, 1901 University Boulevard, NE., Albuquerque, NM.

Requests to participate in the meeting may be submitted to the technical people listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, 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: Darlene Harrod, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8814; fax number: (202) 564–8813; e-mail address: *harrod.darlene@epa.gov*.

David Conrad, Executive Director, National Tribal Environmental Council, 2501 Rio Grande Boulevard, NW., Albuquerque, NM 87104; telephone number: (505) 242–2175; fax number: (505) 242–2654; e-mail address: *dconrad@ntec.org*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in FOSTTA and hearing more about the perspectives of the states and tribes on EPA programs and information exchange regarding important issues related to human health and environmental exposure to toxic chemicals. Potentially affected entities may include, but are not limited to:

- States and federally recognized tribes.
- State, federal, and local environmental and public health organizations.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the technical people listed under **FOR FURTHER INFORMATION CONTACT**.

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–2004–0099. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA 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 holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the 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.

II. Background

The Toxic Substances Control Act (TSCA), 15 U.S.C. 2609 section 10(g), authorizes EPA and other federal agencies to establish and coordinate a system for exchange among federal, state, and local authorities of research and development results respecting toxic chemical substances and mixtures, including a system to facilitate and promote the development of standard data format and analysis and consistent testing procedures. Through FOSTTA, the CIMP focuses on EPA's chemical program and works to develop a more coordinated effort involving federal, state, and tribal agencies. P2 promotes the prevention ethic across society, helping companies incorporate P2 approaches and techniques and integrating P2 into mainstream environmental activities at both the federal level and among the states and tribes. TAP concentrates on chemical and prevention issues that are most relevant to the tribes, including lead control and abatement, tribal traditional/subsistence lifeways, and hazard communications and outreach. FOSTTA's vision is to focus on major policy-level issues of importance to states and tribes, recruit more senior state and tribal leaders, increase outreach to all 50 states and some 560 federally recognized tribes, and vigorously seek ways to engage the states and tribes in ongoing substantive discussions on complex and oftentimes controversial environmental issues.

In January 2002, the Environmental Council of the States (ECOS), in cooperation with the National Tribal Environmental Council (NTEC), was awarded the new FOSTTA cooperative agreement. ECOS, NTEC, and EPA's Office of Pollution Prevention and Toxics (OPPT) are co-sponsoring the meetings. As part of a cooperative agreement, ECOS facilitates ongoing efforts of the state and tribal leaders and OPPT to increase understanding and improve collaboration on toxic chemicals and pollution prevention issues, and to continue a dialogue on how federal environmental programs can best be implemented among the states, tribes, and EPA.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the technical people listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number OPPT–2004–0099, must be received on or before June 25, 2004.

IV. The Meeting

In the interest of time and efficiency, the meetings are structured to provide maximum opportunity for state, tribal, and EPA participants to discuss items on the predetermined agenda. At the discretion of the chair, an effort will be made to accommodate participation by observers attending the proceedings. The FOSTTA representatives and EPA will collaborate on environmental protection and pollution prevention issues. The tentative agenda items identified by the states and the tribes follow:

1. Environmental issues in Indian country.
2. State/tribal pollution prevention collaboration.
3. TAP work plan working session.
4. National Pollution Prevention and Toxics Advisory Committee (NPPTAC) tribal work group.

List of Subjects

Environmental protection, Pollution prevention.

Dated: June 4, 2004.

Barbara A. Cunningham,

Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 04–13688 Filed 6–16–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7773–7]

Notice of Proposed Administrative Consent Agreement and Final Order Pursuant to Section 309(g)(4) of the Clean Water Act: In the Matter of Paul B. and Susan D. Kartchner

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA), Region IX, is hereby giving notice of a proposed Consent Agreement and Final Order (''CA/FO''), which resolves penalties for alleged violations of section 404 of the Clean Water Act (''CWA''). The respondents to the CA/FO are Paul B. and Susan D. Kartchner (the ''Kartchners''). Through the proposed CA/FO, the Kartchners will pay $5,550 as a penalty for alleged violations involving the discharge of fill material into the San Pedro River, which is a water of the United States located in Cochise County, Arizona.

DATES: Comments must be submitted on or before July 19, 2004. Any person who comments on the proposed CA/FO shall be given notice of any hearing held and a reasonable opportunity to be heard and to present evidence.

ADDRESSES: Requests for copies of the proposed CA/FO should be addressed to: Richard Campbell, Attorney Advisor, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, Mailcode: ORC–2, San Francisco, CA 94105.

Comments regarding the proposed CA/FO should be addressed to: Danielle Carr, Regional Hearing Clerk, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Comments should reference the following information:

Case Name: In the Matter of Paul B. and Susan D. Kartchner.

Docket Number: CWA–9–2004–0001.

FOR FURTHER INFORMATION CONTACT: Additional information on this matter may be obtained by contacting Richard Campbell at the above address or by telephone at (415) 972–3870.

SUPPLEMENTARY INFORMATION: Procedures by which the public may submit written comments or participate in the proceedings are described in the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 CFR part 22. The Final Order will be issued at the close of the thirty-day comment period unless a public hearing is requested.

Dated: June 3, 2004.

Alexis Strauss,

Director, Water Division, Region IX.

[FR Doc. 04–13685 Filed 6–16–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

DATE AND TIME: *Tuesday, June 22, 2004 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: *Thursday, June 24, 2004 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 2004–15: Bill of Rights Educational Foundation by David T. Hardy.

Advisory Opinion 2004–17: Becky Armendariz Klein, candidate for U.S. House of Representatives, Texas—District 25.

Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Acting Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 04–13763 Filed 6–15–04; 8:45 am]

BILLING CODE 6715–01–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.: 011284–055.

Title: Ocean Carrier Equipment Management Association Agreement (''OCEMA'').

Parties: APL Co. Pte. Ltd.; American President Lines, Ltd.; A.P. Moller-Maersk A/S, trading under the name of Maersk Sealand; CMA CGM, S.A.; Compania Sudamericana deVapores, S.A.; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft KG; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co. Ltd.; Mitsui O.S.K. Lines Ltd.; Lykes Lines Limited, LLC; TMM Lines Limited, LLC; Contship Containerlines, a division of CP Ships (UK) Limited; Australia-New Zealand Direct Line, a division of CP Ships (UK) Limited; Orient Overseas Container Line Limited; P&O Nedlloyd Limited; P&O Nedlloyd B.V.; Nippon Yusen Kaisha Line; Yangming Marine Transport Corp.; COSCO Containerlines Company Limited; Kawasaki Kisen Kaisha, Ltd.; and Crowley Maritime Corporation.

Synopsis: The agreement modification adds Atlantic Container Line as a party to the agreement.

Agreement No.: 011884.

Title: Hampton Road Chassis Pool II Agreement.

Parties: Virginia International Terminals, Inc., and the Ocean Carrier Equipment Management Association, for itself and on behalf of the following of its member lines: APL Co. Pte. Ltd.; American President Lines, Ltd.; Atlantic Container Line; Australia-New Zealand Direct Line, a division of CP Ships (UK) Limited; CMA CGM, S.A.; Compania Sudamericana de Vapores, S.A.; Contship Containerlines, a division of CP Ships (UK) Limited; COSCO Containerlines Company Limited; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft KG; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha, Ltd.; Lykes Lines Limited, LLC; Mitsui O.S.K. Lines Ltd.; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; P&O Nedlloyd Limited; P&O Nedlloyd B.V.; TMM Lines Limited, LLC; and Yangming Marine Transport Corp.

Synopsis: The proposed agreement would authorize the establishment of a chassis pool at the Port of Hampton Roads, Virginia, at various terminals and related facilities operated by Virginia International Terminals. The parties request expedited review.

Agreement No.: 201143–004.

Title: West Coast MTO Agreement.

Parties: APM Terminals Pacific; California United Terminals, Inc.; Eagle Marine Services, Ltd.; Husky Terminals, Inc.; International Transportation Service, Inc,; Long Beach Container Terminal, Inc.; Marine Terminals Corp.; Metropolitan Stevedore Company; Pasha Stevedoring & Terminals, L.P.; Trans Bay Container Terminal, Inc.; Trans Pacific Container Service Corporation; Yusen Terminals, Inc.; SSA Marine (for itself and its marine terminal operator affiliates Pacific Maritime Services, L.L.C. and SSA Terminal (Long Beach), LLC).

Synopsis: The agreement is a restatement of the West Coast MTO Discussion Agreement (FMC Agreement No. 201143). The amendment changes the name of the agreement and adds authority to discuss, agree upon, implement and enforce rules, procedures and charges intended to encourage the use of off-peak hour services, as well as to adopt and implement related procedural and administrative mechanisms. It provides procedures for the members to be bound by and/or opt out of agreement decisions and provides for the posting of financial security and resolution of disputes by arbitration. The amendment clarifies the financial obligations of the parties and the voting requirements for action under the agreement. The parties request expedited review.

Dated: June 10, 2004.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–13594 Filed 6–16–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 9, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Central Wisconsin Financial Services, Inc., Wausau, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Wausau, Wausau, Wisconsin.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Southwest Bancorporation of Texas, Inc., Houston Texas, and Southwest Holding Delaware, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of Klein Bancshares, Inc., Houston, Texas, and thereby indirectly acquire voting shares of Klein Bancshares of Delaware, Inc., Wilmington, Delaware, and Klein Bank, Klein, Texas.

Board of Governors of the Federal Reserve System, June 10, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–13605 Filed 6–16–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–66]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

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. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.* Written comments should be received within 60 days of this notice.

Proposed Project

Validating Autism Surveillance Methodology in Metropolitan Atlanta Developmental Disabilities Surveillance Program (MADDSP)—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background

MADDSP was established in 1991 as an ongoing active surveillance system for select developmental disabilities (mental retardation, cerebral palsy, vision impairment, and hearing loss) in 3 to 10 year old children. In 1996, autism spectrum disorders (ASD) was added to MADDSP due to growing concern about the prevalence of the condition. MADDSP defines ASD as a constellation of social, communicative,

and behavioral impairments consistent with the DSM–IV–TR diagnostic criteria for Autistic Disorder, Asperger's Disorder, and Pervasive Developmental Disorders not otherwise specified.

MADDSP relies on an extensive review of records to identify children with an ASD. Potential case records are identified from multiple sources which are likely to maintain evaluation or treatment records for children with ASD. Pertinent ICD–9, DSM–IV codes and predetermined behavioral descriptions are used to trigger records for abstraction. Clinical experts then review the abstracted data and determine case status based on a behavioral coding scheme that is in accordance with the DSM–IV–TR definition for Pervasive Developmental Disorders.

This record review methodology for ASD surveillance has been executed and is being used; however, the method is not currently validated by a clinical sample which is considered the gold standard for identifying ASD. For this reason, it is important to validate surveillance methods in a clinical sample in order to determine whether current surveillance methodology accurately captures prevalence estimates for this developmental outcome. The sensitivity and specificity of MADDSP will be measured using judgments from the clinical exam as the gold standard. The results from this study will provide important implications for how ASD surveillance is maintained.

Primary caregivers of children already identified through surveillance methods will be contacted, informed of the study, and asked to participate through an invitation letter and/or telephone contact. Clinic visits will be scheduled for all children whose primary caregiver agrees to take part in the study and who signs a written informed consent; child assent will be obtained at the time of the clinic visit. Data collection methods will consist of: (1) Parental questionnaires, which will focus on questions about their child's behavior and developmental history; and, (2) a developmental evaluation for the child participant, which includes a play based assessment specific to ASD and a measure of cognitive development. There is no cost to respondents.

Annualized Burden Table:

Survey instruments	No. of respondents	No. of responses per respondent	Avg. burden per response (in hours)	Total burden hours
Parental questionnaires	250	1	3	750
Child developmental evaluation measures	250	1	2	500
Total				1250

Dated: June 10, 2004.

Alvin Hall,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 04–13710 Filed 6–16–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Projects for Family Support 360 (Planning and Implementation Pilot One-Stops for Families With Members with Developmental Disabilities) and for Information and Referral Centers for Youth With Developmental Disabilities and Emerging Leaders

Program Office Name: Administration on Developmental Disabilities (ADD).

Announcement Type: Competitive Grant-Initial.

Funding Opportunity Number: HHS–2004–ACF–ADD–DN–0003.

CFDA Number: 93.631.

DATES: Applications are due August 2, 2004. Letters of Intent are due July 2, 2004.

I. Funding Opportunity Description

General Description

The Administration on Developmental Disabilities (ADD) seeks to accomplish the following with these grant awards:

- Enhance the capabilities of families in assisting individuals with developmental disabilities to achieve their maximum potential;
- Support the increasing ability of individuals with developmental disabilities to exercise greater choice and self-determination and to engage in leadership activities in their communities; and
- Ensure the protection of individuals with developmental disabilities' legal and human rights.

Through the Projects of National Significance (PNS) grant program, ADD awarded funding to 31 States/Territories for Family Support 360 planning grants to plan multi-agency partnerships to design one-stop centers to assist unserved and underserved families with a member who has a developmental disability in Fiscal Year 2003. The main purpose of the one-stop centers is to preserve, strengthen, and maintain the family unit. Each grantee was designated by the Governor as the lead agency for their State or Territory. Project partnerships were required to involve at least one elected official, the State Developmental Disabilities Council, the Protection and Advocacy System, the University Center(s) for Excellence on Developmental Disabilities in the State, and others interested in strengthen families (including faith-based organizations). The 31 planning grantees each received up to $100,000 for one year of funding.

Priority Area I of this Program Announcement provides a funding opportunity for pilot implementation grants for one-stop centers(s). The 31 States/Territories that were awarded a planning grant in Fiscal Year 2003 from ADD are eligible to apply on a competitive basis for these pilot grants. ADD intends to provide for at least 17 pilot grants this year.

Priority Area II of this Program Announcement provides a funding opportunity for States and Territories that did not receive a planning grant for Family Support 360 last year. On a competitive basis, at least 8 grants will be funded under Priority Area II.

Priority Area III of this Program Announcement provides a funding opportunity to design and demonstrate information, resource, and training centers for youth and emerging leaders with developmental disabilities. On a competitive basis, at least 8 grants will be funded under Priority Area III.

For purposes of this Program Announcement, the term ''targeted families'' refers to poor and/or geographically unserved or underserved families (including underserved families from racial, ethnic or cultural minority backgrounds) with a child or adult member with a developmental disability. Additionally, the term

''youth'' is defined as individuals with developmental disabilities between the ages of 13 and 17 while ''emerging leaders'' refers to individuals with developmental disabilities between the ages of 18 and 30 with the desire and interest to engage in community leadership and policymaking activities.

Background on ADD and ADD Programs

ADD is located within the Administration for Children and Families (ACF) at the Department of Health and Human Services (DHHS). ADD shares common goals with other ACF programs that promote the economic and social well-being of families, children, individuals, and communities. ACF and ADD envision:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, States, and Congress that enable solutions that transcend traditional agency boundaries;
- Services planned and integrated to improve access to programs and supports for individuals and families;
- A strong commitment to working with unserve and underserved persons with developmental disabilities and their families;
- A community-based approach that recognizes and expands on the resources and benefits of diversity; and
- A recognition of the power and effectiveness of public-private partnerships, including collaboration among a variety of community groups and government agencies, such as a coalition of faith-based organizations, grassroots groups, families, and public agencies to address a community need.

The goals, listed above, will enable more individuals, including people with developmental disabilities, to live productive and independent lives integrated into their communities. The Projects of National Significance (PNS) Program is one means through which ADD promotes the achievement of these goals.

ADD is the lead agency within ACF and DHHS responsible for planning and administering programs to promote the self-sufficiency and protect the rights of persons with developmental disabilities. ADD implements the Developmental Disabilities Assistance and Bill of Rights Act, the DD Act, which was reauthorized by Congress in 2000.

The DD Act of 2000 (42 U.S.C.15001, *et seq.*) supports and provides assistance to States, public agencies, and private nonprofit organizations to assure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity, integration, and inclusion into the community.

As defined in the DD Act, the term ''developmental disabilities'' means a severe, chronic disability of an individual that is attributable to a mental or physical impairment or combination of mental and physical impairments that is manifested before the individual attains age 22 and is likely to continue indefinitely. Developmental disabilities result in substantial limitations in three or more of the following functional areas; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and capacity for economic self-sufficiency. An individual from birth to age 9 who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria if the individual, without services and supports, has a high probability of meeting those criteria later in life.

A number of significant findings are identified in the DD Act, including:

- Disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to enjoy the opportunity for independence, productivity, integration, and inclusion into the community;
- Individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely; and
- Individuals with developmental disabilities often require lifelong specialized services and assistance, provided in a coordinated and culturally competent manner by many agencies, professionals, advocates, community representatives, and others to eliminate barriers and to meet the needs of such individuals and their families.

The DD Act also promotes the policies presented below:

- Individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of achieving independence, productivity, integration, and inclusion into the community, and often require the provision of services, supports, and other assistance to achieve such;
- Individuals with developmental disabilities have competencies, capabilities, and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual; and
- Individuals with developmental disabilities and their families are the primary decision makers regarding the services and supports such individuals and their families receive, and play decision making roles in policies and programs that affect the lives of such individuals and their families.

Other General Information:

Anticipated Total Funding: $7,250,000.

Anticipated Number of Awards: 40.

Ceiling on Amount of Individual Awards: Individual priority areas vary from $100,000 to $250,000.

Floor on Amount of Individual Awards: None.

Average Projected Award Amount: Individual priority areas range from $100,000 to $250,000.

Project Periods for Awards: Three year project periods with twelve month budget periods.

Priority Area I: Family Support 360 Pilot Implementation Grants

Priority Area I Background Information

Purpose: To implement the State's Family Support 360 plan for one-stop center(s) to assist the targeted families to preserve, strengthen, and maintain the family unit.

In Fiscal Year 2003, ADD awarded funding to 31 Family Support 360 planning grants to plan multi-agency partnerships to design one-stop centers to assist unserved and underserved families with a member who has developmental disabilities. The main purpose of the one-stop centers is to preserve, strengthen, and maintain the family unit. Each grantee was designated by the Governor as the lead agency for their State or Territory for the planning grant. Project partnerships were required to involve at least one elected official, the State Developmental Disabilities Council, the Protection and Advocacy System, the University Center(s) for Excellence on Developmental Disabilities in the State, and others interested in strengthening families (including faith-based organizations). This Priority Area provides the 31 States who received a Family Support 360 planning grant last

year with the opportunity to compete for a Family Support 360 Pilot Implementation Grant this Fiscal Year.

The Centers for Medicare & Medicaid Services (CMS), in partnership with the Administration on Aging (AoA), funded 12 State grants to develop Aging and Disability Resource Center programs to help consumers make informed decisions about their long-term care service and support options and to serve as the entry point to the long-term service and support system in FY 2003. Aging and Disability Resource Centers will serve the elderly and at least one other target population of individuals with disabilities. Additional States may be funded in FY 2004 pending the availability of funding. To learn more about the Resource Center grant program and the 12 grantees visit *http://www.adrc-tae.org.* Applicants to the ADD's Family Support 360 program are encouraged to collaborate with Aging and Disability Resource Center program efforts in those States where they exist.

Note to Applicants: If multiple years of funding are being requested for the proposed project, the application must identify project objectives for each year.

Priority Area I Minimum Requirements for Project Design

• *General Parameters for Services and Supports to Targeted Families:* Implementation plans for the one-stop center must address the following parameters: Information and referrals, as well as in-depth planning for services and supports with at least 50 families on an annual basis. The families projected to be served would have access to individualized family-centered assessment and planning for services and supports. Individualized planning may focus on one or more of the following areas of need: healthcare and mental health services, eligibility for personal assistance and supports (*e.g.*, access to direct care workers, respite care, food stamps, and cash assistance), accessible transportation, childcare services, family strengthening services (*e.g.*, parenting education and marriage education), early intervention, education, housing, and employment-related assistance. The individualized planning and assessment through the one-stop must involve at least three services in the first year of the grant, with three additional services being made available each year in year 2 and year 3 of the grant. The selection of services to be offered in any year should be those that the eligible targeted families will most likely need throughout the grant year.

• *Specific Requirements for the Implementation Plan:* Building upon the activities and outcomes of the State's Family Support 360 planning grant, each applicant must submit a plan for implementing at least one one-stop center to assist targeted families to preserve and strengthen the family unit. The implementation plan must address serving at least 50 unserved and/or underserved families in the community each year for the three years of the grant. At a minimum, the implementation plan contained in the State's application package must include the following information:

1. A meaningful role for targeted families in implementing the one-stop center(s);
2. An analysis of existing State and Federal laws, programs, and resources impacting the lives of the targeted families;
3. The criteria and process for selecting the targeted families to be served by the one-stop center(s);
4. The criteria to be used to establish if a family has achieved the outcomes in its family-centered plan;
5. A description of the operations and procedures relating to the following
   a. Outreach to and recruitment of targeted families;
   b. Information and referral to targeted families, community organizations assisting families in need (including those involved in family strengthening), and others;
   c. Intake, assessment, and determination of eligibility of families;
   d. Development and monitoring of Individualized Family Plans (the process for developing and implementing the plans, including who will be involved in the plan development and who will monitor progress, and the types of intervention to be pursued when a targeted family experiences problems related to its plan);
   e. Records maintenance (access to and retrieval of files, and protection of the confidentiality of the families' personal information); and
   f. Financing of services (a description of how funding for the services and supports in a family's plan could be secured);
   g. Copies of memorandums of understanding (MOUs) or other mechanisms reflecting commitments with one-stop partners.
6. The staffing patterns and staff requirements, including training plans for staff members and an outline of a recruitment and hiring plan for securing key personnel who have substantial experience living with a developmental disability or who have direct substantial experience living with or assisting individuals with developmental disabilities;
7. An assurance of compliance with the Americans with Disabilities Act, where applicable, and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act Amendments of 1998;
8. The roles and responsibilities of the participating agencies, partners, and organizations, including at least one elected official, the State Developmental Disabilities Council, the State Protection and Advocacy System, and the University Center(s) on Developmental Disabilities in the State/Territory, as well as others interested in family strengthening activities.
9. An organizational chart for the one-stop center(s);
10. Space and equipment requirements, including communication and information technology, for the one-stop center(s);
11. A timetable for completing the activities for implementing the State's plan for the one-stop center(s);
12. Budget requirements for the one-stop center(s);
13. A mechanism for disseminating the outcomes of the one-stop center(s);
14. A plan of action for sustaining the activities of the one-stop center(s) after the closure of the implementation grant from ADD. And

• *Project Meeting:* Each applicant's proposed project budget must include estimated travel expenses (airfare, ground transportation, lodging, etc.) for at least one key project staff member to attend a three day meeting in Washington, DC with Federal staff on project issues and/or for training and technical assistance.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $5,250,000.

Anticipated Number of Awards: 17 to 20 Grant Awards per budget period.

Ceiling on Amount of Individual Annual Awards: $250,000 per budget period.

Floor of Individual Award Amounts: None.

Average Projected Award Amount: $250,000 per budget period.

Project Periods for Awards: This priority area is inviting applications for project periods up to three years. Awards, however, will be made on a competitive basis, for a one-year budget period. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a

noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

III. Eligibility Information

1. Eligible Applicants

Other: Entities designated by the Governor of the State or Territory that received a Family Support 360 planning grant from ADD in Fiscal Year 2003.

Additional Information on Eligibility:

- The application must include a letter from the Governor designating the lead agency for the Family Support 360 Pilot Implementation Grant.
- If the designated lead agency is not to be a State or local public human services agency, the Governor must, in a letter to the Commissioner of ADD, also identify a State or local human service agency that will be the lead partner with the private lead agency which is being designated by the Governor.
- The Governor's letter must accompany the application at the time of submission for funding consideration. Applications that do not include this letter will not be reviewed and ranked for funding consideration.
- Non-profit organizations that received a Family Support 360 planning from ADD in Fiscal Year 2003 must demonstrate proof of non-profit status. Proof of non-profit status is any one of the following:

a. A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code;

b. A copy of a currently valid IRS tax exemption certificate;

c. A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals;

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or

e. Any of the items in the subparagraphs immediately above for a State or national parent and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Applicants are cautioned that the ceiling for individual awards is $250,000. An application exceeding the $250,000 threshold will be considered non-responsive and returned without review.

2. Cost Sharing or Matching

Grantees must match $1 for every $3 requested in Federal funding to reach 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF/ADD share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds must provide a match of at least $33,333 (the total project cost is $133,333 of which $33,333 is 25%).

Applications that fail to include the required amount of cost-share will be considered non-responsive and returned without review.

3. Other (If Applicable)

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Applicants are cautioned that the ceiling for individual awards is $250,000. Applications exceeding the $250,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that fail to include the required amount of cost-share will be considered non-responsive and returned without review.

IV. Application and Submission Information

1. Address To Request an Application Package

Valerie Reese, Program Specialist, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Developmental Disabilities, 370 L'Enfant Promenade, SW., Washington, DC 20447.E-mail: *vreese@acf.hhs.gov,* phone: (202) 690–5805, TTY/TDD: (202) 690–6415, fax: (202) 205–8037.

2. Content and Form of Application Submission

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via *Grants.Gov:*

- Electronic submission is voluntary.
- When you enter the Grants.Gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.Gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this Program Announcement and meet the application deadline.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *http://www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

Electronic Address where applications will be accepted: *http://www.Grants.gov.*

• *Project Description:* The Project Description is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the Priority Area. The narrative should also provide information concerning how the application meets the evaluation criteria, using the following headings:

(a) Objectives and Need for Assistance;
(b) Results and Benefits Expected;
(c) Approach;
(d) Organization Profile; and
(e) Budget and Budget Justification.

• *Application Package:* Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back, if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, *etc.*) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

The narrative should be typed double-spaced on a single-side of an 8½″ x 11″ plain white paper, with 1″ margins on all sides, using black print no smaller than 12 pitch or 12 point size. All pages of the narrative, including attachments (such as charts, references/footnotes, tables, maps, exhibits, *etc.*) and letters of support must be sequentially numbered, beginning with ''Objectives and Need for Assistance'' as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including all attachments and required Federal forms, must not exceed 60 pages. The federally required forms will be counted towards the total number of pages. The 60-page limit will be strictly enforced. All pages beyond the first 60 pages of text will be removed prior to applications being evaluated by the reviewers. A page is a single side of an 8½ x 11″ sheet of paper with 1″ margins.

Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose copying difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

• *Assurances/Certifications:* Applicants are required to submit a SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants should furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicant must also understand that they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Part C Environmental Tobacco Smoke (also known as the Pro-Children's Act of 1994). By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

In addition, applicants are required under section 162(c)(3) of the Act to provide assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who will receive services under projects assisted under part E will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities). Each application must include a statement providing this assurance.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

Non-profit applicants must demonstrate proof of their non-profit status and this proof must be included in their application. Proof of non-profit status is any one of the following:

a. A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code;

b. A copy of a currently valid IRS tax exemption certificate;

c. A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals;

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or

e. Any of the items in the subparagraphs immediately above for a State or national parent and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

3. Submission Dates and Times

If you intend to submit an application, please send us a fax or e-mail with the number and title of this Program Announcement, your organization's name and address, your contact person's name, your contact's phone and fax numbers, and their e-mail address. While Letters of Intent are not a requirement for funding consideration, this information will be used to determine the number of experts needed to review applications and to update the mailing list for future Program Announcements from ADD.

Letters of Intent are due July 2, 2004, at the following address: U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Developmental Disabilities, 370 L'Enfant Promenade, SW., Washington, DC 20447. Attention: April Myers. Phone: (202) 690–5985, TTY/TDD: (202) 690–6415, e-mail: *amyers@acf.hhs.gov,* fax: (202) 205–8037.

The closing time and date for receipt of applications is 4:30 p.m. (eastern time zone) on August 2, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade, SW., 8th Floor, Washington, DC 20447. Attention: Lois Hodge.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., at the following address: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade, SW., 8th

Floor, Washington, DC 20447. Attention: Lois Hodge.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms:

What to submit	Required content	Required form or format	When to submit
Notice of Intent to Submit	Applicant's name and contact information.	Fax (202) 205–8037 or e-mail (*amyers@acf.hhs.gov*)	July 2, 2004.
Governor's letter of designation for Applicants under Priority Areas I and II.	Designate the applicant as the lead applicant for the State/Territory by name.	Letter with the Governor's signature, addressed to Commissioner Patricia A. Morrissey, Ph.D..	August 2, 2004.
SF424, SF424a, SF424B	Per required form	May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.*	August 2, 2004.
Project Summary/Abstract	Summary of application request.	One page limit	August 2, 2004.
Project Description	Responsiveness to evaluation criteria.	Format described in Review and Selection section. Limit 60 pages. Size 12 font, ½″ margins..	August 2, 2004.
Certification Regarding Lobbying	Per required form	May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.*	August 2, 2004.
Disclosure of Lobbying Activities (SF–LLL).	Per required form	May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.*	August 2, 2004.
Environmental Tobacco Smoke Certification.	Per required form	May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.*	August 2, 2004.

Additional Forms: Private-non-profit organizations are encouraged to submit with their applications the additional survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants''.

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/form.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC), Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs'', and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities''. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs

As of January 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process: Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia and Washington.

Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC.

All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

This grant is limited to Entities designated by the Governor of the State or Territory that received a Family

Support 360 planning grant from ADD in Fiscal Year 2003.

Non-Allowable Costs: Reimbursement of pre-award costs, costs for foreign travel, or costs for construction activities are not allowable charges to this Federal grant program.

Indirect Costs: In order to charge Indirect Costs to the Federal Funds and/or use Indirect Costs as a matching share, the applicant must have an approved indirect costs agreement for the period in which the Federal funds would be awarded.

6. Other Submission Requirements

Submission by Mail: An Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. ACF will not be sending applicants notifications that their applications were received under this Program Announcement. The Application must be received at the address below by 4:30 p.m. eastern standard time on or before the closing date. Applications should be mailed to: The U.S. Department of Health and Human Services, ACF Office of Grants Management, 370 L'Enfant Promenade, SW., 8th Floor, Washington, DC 20447. Attention: Lois Hodge.

Hand Delivery: An Applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern standard time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: The U.S. Department of Health and Human Services, ACF Office of Grants Management, 370 L'Enfant Promenade, SW., 8th Floor, Washington, DC 20447. Attention: Lois Hodge.

Electronic Submission: Please *see* section IV.2 Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection information. The project description is approved under OMB Control Number 0970–0139 which expires 4/30/2007. 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.

General Project Description: Applicants are required to submit a full project description and must prepare the project description statement in accordance with the following instructions.

1. *Project summary/abstract:* Provide a summary of the project description (a page or less) with reference to the funding request.

2. *Objectives and Need for Assistance:* Clearly identify the physical, economic, social, financial, institutional and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonies from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated) some of which may be outside the scope of the Program Announcement.

3. *Results or Benefits Expected:* Identify the results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve.

4. *Approach:* Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors, which might accelerate or decelerate the work, and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. Where activity or function cannot quantify accomplishments, list them in chronological order to show the schedule of accomplishments and their target dates. Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a ''collection of information'' that is ''conducted or sponsored'' by ACF.

5. *Organization Profile:* Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. List organizations, cooperating entities, consultants, or other key individuals whom will work on the project along with a short description of the nature of their effort or contribution.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

6. *Budget and Budget Justification:* Provides line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail; sufficient for the calculation to be duplicated. The detailed budget must include a breakout by the funding sources identified in Block 15 of the SF–424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed cost.

Applicants have the option of omitting the Social Security Numbers and specific salary rates of the proposed project personnel from the two copies submitted with the original application to ACF. For purposes of the outside review process, applicants may elect to

summarize salary information on the copies of their application. All salary information must, however, appear on the signed original application to ACF.

1. Evaluation Criteria

Five specific criteria will be used to review and evaluate each application. Each criterion should be addressed in the project description section of the application. The point values indicate the maximum numerical weight possible for each criterion in the review process.

Criterion 1: Approach (35 points)

The applicant must outline a sound, workable, and detailed plan of action, pertaining to the goals and objectives of the proposed project. Activities should be identified in chronological order, with target dates for accomplishment and the key personnel responsible for completing the activity. The plan of action should also clearly identify and delineate the roles and involvement of each of the proposed project's partners, collaborators, and/or sub-grantees.

The plan of action should involve the following types of information; (a) how the work will be accomplished; (b) factors that might accelerate or decelerate the work; (c) reasons for taking this approach as opposed to other possibilities; and (d) descriptions of innovations and/or unusual features (such as technological or design innovations, reductions in cost and/or time, or extraordinary community involvement). Additionally, the applicant must provide a discussion of how the expected results and benefits will be evaluated for the proposed project. This discussion should explain the methodology that will be used to determine if the needs identified and discussed in the application are being met and if the results and benefits identified are being achieved.

Using the following values for each required item in this Criterion, points will be awarded according to the extent to which the applicant:

15 Points Outlines a sound, workable, and detailed plan of action, pertaining to the goals and objectives of the proposed project.

8 Points Discusses and explains the methodology to be used in determining if identified needs are being met and expected results are being achieved.

4 Points Cites factors that might accelerate or decelerate the work.

4 Points Provides a rationale for taking this approach as opposed to other possibilities.

4 Points Describes innovations and/or unusual features of the proposed project.

Criterion 2: Objectives and Need for Assistance (20 Points)

The application must identify the following information: (a) The need for assistance, (b) the objectives of the proposed project, (c) the precise location of the proposed project, and (d) the area to be served by the proposed project.

The applicant may accomplish this best by: (a) Pinpointing the relevant physical, economic, social, financial, institutional, or other problems requiring a solution; (b) demonstrating the need for the assistance; (c) stating the principal and subordinate objectives for the proposed project; (d) providing supporting documentation and/or other testimonies from concerned individuals and groups other than the applicant; (e) providing relevant data based on research or planning studies, and (f) including maps and other graphic aids.

Using the following values for each required item in this Criterion, points will be awarded according to the extent to which the applicant:

5 Points Identifies and demonstrates the need for assistance.

5 Points States the principal and subordinate objectives for the proposed project.

4 Points Provides relevant data based on research and/or planning studies.

4 Points Provides supporting documentation and/or testimonies from concerned individuals and groups, other than the applicant.

2 Points Includes maps and other graphics identifying the precise location of the proposed project.

Criterion 3: Organization Profile (20 Points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The applicant must describe the relationship between this project and other work that is planned, anticipated, or currently underway by the applicant.

This section should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is structured, the types and quantity of services it provides, and/or the research and management capabilities it possesses. It may include a description of any current or previous relevant experience; or it may describe the competence of the project team and its demonstrated ability to produce final products that are readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization must be included.

Using the following values for each required item in this Criterion, points will be awarded according to the extent to which the applicant:

6 Points Identifies the background of key staff members.

6 Points Demonstrates the organization's ability to administer the proposed project.

6 Points Describes and discusses the role and involvement of individuals with developmental disabilities and their families in the proposed project and organization.

2 Points Includes an organizational chart, depicting the relationship of the project to the current organization.

Criterion 4: Results or Benefits Expected (17 Points)

The expected results and benefits of the proposed project should be consistent with the objectives of the application. The application must state the project's anticipated contributions to policy, practice, theory, and/or research. The proposed project costs should be reasonable in view of the expected results.

Using the following values for each required item in this Criterion, points will be awarded according to the extent to which the applicant:

10 Points States the anticipated contributions of the proposed project to policy, practice, theory, and/or research.

7 Points Expected results and benefits are consistent with the proposed project's goals and objectives.

Criterion 5: Budget and Budget Justification (8 Points)

Applicants are expected to present a budget with reasonable project costs, appropriately allocated across component areas, and sufficient to accomplish the objectives. The requested funds for the project must be fully justified and documented.

Applications must provide a narrative budget justification that describes how the categorical costs are derived and discusses the reasonableness and appropriateness of the proposed costs. Line item allocations and justification

are required for both Federal and non-Federal funds. A letter of commitment for the project's non-Federal resources must be submitted with the application in order to be given credit in the review process. A fully explained non-Federal share budget must be prepared for each funding source.

Applicants have the option of omitting the Social Security Numbers and specific salary rates of the proposed project personnel from the two copies submitted with the original application to ACF. For purposes of the outside review process, applicants may elect to summarize salary information on the copies of their application. All salary information must, however, appear on the signed original application for ACF.

Using the following values for each required item in this Criterion, points will be awarded according to the extent to which the applicant:

3 Points Discusses and justifies the costs and reasonableness of the proposed project in view of the expected results and benefits.

3 Points Describes the fiscal controls and accounting procedures to be used.

2 Points Includes a fully explained non-Federal share budget and its source(s).

Additional Points

This year, five additional points will be added to the applicant's total in the scoring process for any project that includes partnership and collaboration with one or more of the 140 Empowerment Zones/Enterprise Communities. To receive the additional five points, the applicant must provide a clear outline for the collaboration and a discussion of how the involvement of the EZ/EC is related to the objectives and the activities of the project. Also, a letter from the appropriate representatives of the EZ/EC must accompany the application indicating its agreement to participate and describing its role in the project. For further information on Empowerment Zones and Enterprise Communities, please visit the ACF Office of Community Service's Web site at *http://www.acf.hhs.gov/programs/ocs/ez-ec.*

2. Review and Selection Process

Applications under this Program Announcement from eligible applicants received by the deadline date will be competitively reviewed and scored. Experts in the field, generally persons from outside the Federal Government, will use the evaluation criteria listed later in the evaluation section of the Program Announcement to review and score the applications. The results of this review are a primary factor in making funding decisions.

ADD reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal Government and/or the applicant. ADD may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States, and the general public. ADD will consider these comments, along with those of the expert reviewers, in making funding decisions.

In making PNS decisions for 2004 grant awards, ADD will consider whether applications focus on or feature the following aspects/activities in their project design to the extent appropriate:

- A substantially innovative strategy with the potential to improve theory or practice in the field of human services;
- A model practice or set of procedures that holds the potential for replication by organizations administering or delivering human services;
- A substantial involvement of volunteers, the private sector (either financial or programmatic), faith-based and community organizations, and/or national or community foundations;
- A favorable balance between Federal and non-Federal funds available for the proposed project, which is likely to result in the potential for high benefit for low Federal investment; and
- A programmatic focus on those most in need of services and assistance, such as unserved and underserved populations, including underserved cultural, ethnic, and racial minority populations.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, and rural and urban areas. In making these decisions, ADD may also take into account the need to avoid unnecessary duplication of effort.

Using the evaluation criteria described in the section below, a panel of at least three reviewers (primarily experts from outside the Federal government) will evaluate and score the applications. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments, and assign numerical scores. The point value following each criterion indicates the maximum numerical weight that each applicant may receive per section in the review process. To facilitate this review, applicants should ensure that they address the minimum requirements identified in the Priority Area description under the appropriate section of the Program Narrative Statement.

Priority Area II: Family Support 360 Planning Grants for One-Stop Center(s)

1. Priority Area II Description

Priority Area II Background Information

Purpose: To plan multi-agency partnerships to design at least one one-stop center to assist targeted families (poor and/or geographically unserved or underserved families with a child or adult member with a developmental disability) to preserve, strengthen, and maintain the family unit.

In order to preserve, strengthen, and maintain the family unit, targeted families often need services and supports from a myriad of public and private providers, each with its own eligibility determination criteria and planning process. There are few States and communities with a comprehensive infrastructure to offer families a seamless, one-point of entry (*i.e.,* one-stop center) to establish eligibility and develop a family-centered plan to preserve and strengthen families. As a result, it is imperative for ADD to support planning initiatives that will allow a variety of partners, including faith-based and community organizations, to discuss and develop consensus on how their collective resources could be used in a more family friendly manner. Successful States under this Priority Area will receive planning grants to explore with their partners how to develop a common language, pool resources, coordinate services, and share expenses in order to reduce overhead and create a setting (*i.e.*, one-stop center) in which outcome-oriented, family-centered, collaborative planning could occur.

The Centers for Medicare & Medicaid Services (CMS), in partnership with the Administration on Aging (AoA), funded 12 State grants to develop Aging and Disability Resource Center programs to help consumers make informed decisions about their long-term care service and support options and to serve as the entry point to the long-term service and support system in FY 2003. Aging and Disability Resource Centers will serve the elderly and at least one other target population of individuals with disabilities. Additional States may be funded in FY 2004 pending the availability of funding. To learn more about the Resource Center grant program and the 12 grantees visit *http://www.adrc-tae.org.* Applicants to the ADD's Family Support 360 program

are encouraged to collaborate with Aging and Disability Resource Center program efforts in those States where they exist.

Priority Area II Minimum Requirements for Project Design

• *Involvement and Input from Targeted Families.* The meaningful involvement of individuals who are members of targeted families must be an essential and measurable element of all project planning and activities.

• *Project Partnerships.* Project activities must be conducted in partnership with at least one elected official, the State Developmental Disabilities Council, the State Protection and Advocacy System, and the University Center(s) on Developmental Disabilities in the State/Territory, as well as others (including, but not limited to, disability-related service providers, advocacy groups, family support groups, family strengthening groups, and faith-based organizations).

• *Building Consensus for an Implementation Plan.* Projects should build a consensus for an implementation plan with their partners to establish and sustain a one-stop center for the targeted families. Implementation plans should include Federal, State, and local inter-agency collaboration, and public-private partnerships to achieve service integration for targeted families.

• *Parameters for Services and Supports in the Implementation Plan.* Implementation plans for the one-stop center must address the following parameters; information and referrals, as well as in-depth planning for services and supports with at least 50 families on an annual basis. The families projected to be served would have access to individualized family-centered planning for services and supports. Individualized planning may focus on one or more of the following areas of need: Healthcare and mental health services, eligibility for personal assistance and supports (*e.g.*, access to direct care workers, respite care, food stamps, and cash assistance), accessible transportation, childcare services, and family strengthening services (*e.g.*, parenting education and marriage education), early intervention, education, housing, and employment-related assistance.

• *Assessment of the Capacity and Capability of Information Technology.* A needs assessment for and/or design of an information system with a single point of entry for the one-stop center should be included in the applicant's project. This activity may involve identifying and testing existing software and hardware to support the computer and informational needs of the one-stop center or designing new technology.

• *Analysis of Eligibility.* A review of existing State and Federal laws that impact the targeted families must be a key element of each project. At a minimum, a legal analysis should provide a detailed summary of the following issues:

(1) Funding streams for services and supports to families with members who have developmental disabilities;

(2) The legal and policy barriers for targeted families to achieving self-sufficiency; and

(3) Eligibility criteria and other program requirements that may pose obstacles to serving targeted families.

• *Training Needs.* Each grantee should identify the training needs of staff members who would work with targeted families, and may include educational and training issues for non-staff assisting the targeted families in other settings and environments.

• *Existing Resources.* Each grantee should identify existing State and local resources for targeted families, including information on services and supports that are available from community groups and faith-based organizations, including those that provide family strengthening services. This information would form the initial database for the one-stop center, leading to a catalog of services and supports for the staff members and targeted families.

• *Development of Policies and Memoranda of Understanding (MOUs).* Each grantee should develop MOUs, policy statements, and procedures between State and local partners on key issues for implementing the one-stop center. Some of the key issues to be agreed upon in this planning process among the partners should include the mission of the one-stop center, the eligible families for services, the roles of agencies' staff members, and the lead agency responsibilities.

• *Key Personnel.* Each grantee should outline a plan for recruitment and securing key personnel who have substantial experience living with a developmental disability or who have direct substantial experience living with or assisting individuals with developmental disabilities;

• *Civil Rights.* Each grantee must comply with the Americans with Disabilities Act, where applicable, and section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act Amendments of 1998.

• *Communication and Dissemination.* Each grantee should have the capacity to communicate and disseminate information with their project partners and others through e-mail and other effective, affordable, and accessible forms of electronic communication.

• *Final Product.* The final product of this planning grant must be a written plan for implementing at least one one-stop center to assist targeted families to preserve and strengthen the family unit. The implementation plan must include, at a minimum, the following information for 50 targeted families annually:

1. Criteria and process for selecting targeted families to be served by the one-stop center. For example, families could be required to have eligibility for Medicaid, be among the geographically unserved or underserved in the State, or be eligible for TANF.

2. Criteria to be used to establish that a family has achieved the outcomes in its family-centered plan;

3. Description of operations and procedures relating to the following;

f. Outreach to and recruitment of targeted families;

g. Information and referral to targeted families, community organizations assisting families in need (including those involved in family strengthening), and others;

h. Intake, assessment, and determination of eligibility of families;

i. Development and monitoring of Individualized Family Plans (the process for developing and implementing the plans, including who will be involved in the plan development and who will monitor progress);

j. Records maintenance (access to and retrieval of files, and the confidentiality of the families' personal information); and

k. Financing of services (a description of how funding for the services and supports in a family's plan could be secured);

4. Staffing patterns and staff requirements;

5. Roles of the participating agencies and organizations;

6. Organizational chart for the one-stop center;

7. Space and equipment requirements;

8. Timetable for implementing this plan for the one-stop center; and

9. Budget requirements for the one-stop center. And

• *Project Meeting:* Each applicant's proposed project budget must include estimated travel expenses (airfare, ground transportations, lodging, etc.) for at least one key project staff member to attend a three day meeting in Washington, DC to meet with Federal staff on project issues and/or for training and technical assistance.

II. Priority Area II Award Information

Funding Instrument Type: Competitive Grant-Initial.

Anticipated Total Priority Area Funding: $1,000,000.

Anticipated Number of Awards: 8 to 10 grant awards per project and budget period.

Ceiling on Amount of Individual Annual Awards: $100,000 per project and budget period.

Floor of Individual Award Amounts: None.

Average Projected Award Amount: $100,000 per project and budget period.

Length of Project: One year project period and twelve month budget period.

III. Priority Area II Eligibility Information

1. Eligible Applicants

State Governments, County Governments, City or Township Governments, State Controlled Institutions of Higher Education, Native American Tribal Governments (Federally Recognized), Public Housing Authorities/Indian Housing Authorities, non-profits having 501(c)(3) status with the IRS, other than institutions of higher education, non-profits that do not have 501(c)(3) status with the IRS, other than institutions of higher education, and private institutions of higher learning.

Additional Information on Eligibility:

- Entities from States/Territories that were awarded a Family Support 360 planning grant from ADD in Fiscal Year 2003 are not eligible to apply for this priority area.
- A letter from the Office of the Governor designating the applicant as the lead agency for the State/Territory must accompany the application. If the Governor's letter does not accompany the application, it will not be reviewed and ranked for funding consideration.
- The designated lead agency may be a State or local agency, tribal government, public or private nonprofit organization (including a faith-based organization), or an institution of higher learning. If the designated lead agency for the planning grant is not a State or local public human services agency, the Governor will need to identify a State or local human services agency to partner with the private lead agency designated by the Governor to be eligible for the implementation funding.
- Depending upon the availability of funds, successful applicants for planning grants may be eligible to apply for implementation funds in future fiscal years.
- Non-profit organizations must demonstrate proof of non-profit status. Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code

(b) copy of a currently valid IRS tax exemption certificate

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or

(e) Any of the items in the subparagraphs immediately above for a State or national parent and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Applicants are cautioned that the ceiling for individual awards is $100,000. An application exceeding the $100,000 threshold will be considered non-responsive and returned without review.

2. Cost Sharing or Matching

Grantees must match $1 for every $3 requested in Federal funding to reach 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF/ADD share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds must provide a match of at least $33,333 (the total project cost is $133,333 of which $33,333 is 25%).

Applications that fail to include the required amount of cost-share will be considered non-responsive and returned without review.

3. Other (if applicable)

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Applicants are cautioned that the ceiling for individual awards is $100,000. Applications exceeding the $100,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that fail to include the required amount of cost-share will be considered non-responsive and returned without review.

IV. Application and Submission Information

1. Address To Request an Application Package

Valerie Reese, Program Specialist, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Developmental Disabilities, 370 L'Enfant Promenade, SW., Washington, DC 20447. E-mail: *vreese@acf.hhs.gov;* phone: (202) 690–5805, TTY/TDD: (202) 690–6415, fax: (202) 205–8037.

2. Content and Form of Application Submission

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via *Grants.Gov:*

- Electronic submission is voluntary.
- When you enter the Grants.Gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.Gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.

• You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.

• You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.

• Your application must comply with any page limitation requirements described in this Program Announcement and meet the application deadline.

• After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.

• We may request that you provide original signatures on forms at a later date.

• You may access the electronic application for this program on *http://www.Grants.gov.*

• You must search for the downloadable application package by the CFDA number.

Electronic Address where applications will be accepted: *http://www.Grants.gov.*

• *Project Description:* The Project Description is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the Priority Area. The narrative should also provide information concerning how the application meets the evaluation criteria, using the following headings:

(a) Objectives and Need for Assistance
(b) Results and Benefits Expected
(c) Approach
(d) Organization Profile; and
(e) Budget and Budget Justification

• *Application Package:* Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

The narrative should be typed double-spaced on a single-side of an 8½″ × 11″ plain white paper, with 1″ margins on all sides, using black print no smaller than 12 pitch or 12 point size. All pages of the narrative, including attachments (such as charts, references/footnotes, tables, maps, exhibits, etc.) and letters of support must be sequentially numbered, beginning with ''Objectives and Need for Assistance'' as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including all attachments and required Federal forms, must not exceed 60 pages. The federally required forms will be count towards the total number of pages. The 60-page limit will be strictly enforced. All pages beyond the first 60 pages of text will be removed prior to applications being evaluated by the reviewers. A page is a single side of an 8½ × 11″ sheet of paper with 1″ margins.

Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose copying difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

• *Assurances/Certifications:* Applicants are required to submit a SF 424B, Assurances— Non-Construction Programs and the Certification Regarding Lobbying. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants should furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicant must also understand that they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Part C Environmental Tobacco Smoke (also known as the Pro-Children's Act of 1994). By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

In addition, applicants are required under section 162(c)(3) of the Act to provide assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who will receive services under projects assisted under Part E will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities). Each application must include a statement providing this assurance.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

Non-profit applicants must demonstrate proof of their non-profit status and this proof must be included in their application. Proof of non-profit status is any one of the following:

a. A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code;

b. A copy of a currently valid IRS tax exemption certificate;

c. A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals;

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or

e. Any of the items in the subparagraphs immediately above for a State or national parent and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

3. Submission Dates and Times

If you intend to submit an application, please send us a fax or e-mail with the number and title of this Program Announcement, your organization's name and address, your contact person's name, your contact's phone and fax numbers, and their e-mail address. While Letters of Intent are not a requirement for funding consideration, this information will be used to determine the number of experts needed to review applications and to update the mailing list for future Program Announcements from ADD.

Letters of Intent are due July 2, 2004, at the following address: U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Developmental Disabilities, 370 L'Enfant Promenade, SW., Washington, DC 20447. Attention: April Myers. Phone: (202) 690–5985, TTY/TDD: (202) 690–6415, e-mail: *amyers@acf.hhs.gov,* fax: (202) 205–8037.

The closing time and date for receipt of applications is 4:30 p.m. (eastern time zone) on August 2, 2004. Mailed or hand carried applications received after

4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address:U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade, SW., 8th Floor, Washington, DC 20447. Attention: Lois Hodge.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., at the following address: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade, SW., 8th Floor, Washington, DC 20447. Attention: Lois Hodge.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms:

What to submit	Required content	Required form or format	When to submit
Notice of Intent to Submit	Applicant's name and contact.	Fax (202) 205–8037 or e-mail (*amyers@acf.hhs.gov*)	July 2, 2004.
Governor's letter of designation for Applicants under Priority Areas I and II.	Designate the applicant as the lead applicant for the State/Territory by name.	Letter with the Governor's signature, addressed to Commissioner Patricia A. Morrissey, Ph.D.	August 2, 2004.
SF424, SF424a, SF424B	Per required form	May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.*	August 2, 2004.
Project Summary/Abstract	Summary of application request.	One page limit	August 2, 2004.
Project Description	Responsiveness to evaluation criteria.	Format described in Review and Selection section. Limit 60 pages. Size 12 font, ½″ margins.	August 2, 2004.
Certification Regarding Lobbying	Per required form	May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.*	August 2, 2004.
Disclosure of Lobbying Activities (SF-LLL).	Per required form	May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.*	August 2, 2004.
Environmental Tobacco Smoke Certification.	Per required form	May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.*	August 2, 2004.

Additional Forms: Private-non-profit organizations are encouraged to submit with their applications the additional survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants''.

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/form.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC), Notification under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs'', and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities''. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs

As of January 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process: Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia and Washington. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC.

All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the

Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

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The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

Non-Allowable Costs: Reimbursement of pre-award costs, costs for foreign travel, or costs for construction activities are not allowable charges to this Federal grant program.

Indirect Costs: In order to charge Indirect Costs to the Federal Funds and/or use Indirect Costs as a matching share, the applicant must have an approved indirect costs agreement for the period in which the Federal funds would be awarded.

6. Other Submission Requirements

Submission by Mail: An Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. ACF will not be sending applicants notifications that their applications were received under this Program Announcement. The Application must be received at the address below by 4:30 p.m. eastern standard time on or before the closing date. Applications should be mailed to: The U.S. Department of Health and Human Services, ACF Office of Grants Management, 370 L'Enfant Promenade, SW., 8th Floor, Washington, DC 20447. Attention: Lois Hodge.

Hand Delivery: An Applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern standard time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: The U.S. Department of Health and Human Services, ACF Office of Grants Management, 370 L'Enfant Promenade, SW., 8th Floor, Washington, DC 20447. Attention: Lois Hodge.

Electronic Submission: Please see section IV. 2 Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

V. Application Review Information

1. Evaluation Criteria

Please see Generic and Specific Evaluation criteria for Priority Area #1, V.1, ''Application Review Information, Evaluation Criteria'' for crafting your response for the Project Narrative.

2. Review and Selection Process

Please see Priority Area #1, V.2, ''Application Review Information, Review and Selection Process'', for information on the review and selection process for this priority area.

Priority Area III: Youth Information, Training, and Resource Centers Planning Grants

I. Priority Area III. Description

Priority Area III Background Information

Purpose: To design and demonstrate community-based information, training, and resource centers with youth and emerging leaders, as defined above for this Program Announcement.

Young people with disabilities are more than twice as likely to drop out of high school (during 1998 to 1999, 29% of youths with developmental disabilities 14 and older dropped out of school) and are less likely to graduate high school with a standard diploma than youth without disabilities (during 1998 to 1999, 57.4% of students with disabilities graduated with a standard diploma compared to approximately 75% of their non-disabled counterparts). Additionally, young people with disabilities are less likely to be engaging in work activity (50% of the individuals with developmental disabilities age 18–29 who can work do work, compared to 72% of their non-disabled counterparts). Through the design and demonstration of youth information, resource, and training centers under Priority Area III, ADD envisions improving the odds for youth with developmental disabilities to graduate with a standard high school diploma and encouraging emerging leaders with developmental disabilities to seek and maintain employment.

For purposes of this Program Announcement, the term ''youth'' is defined as individuals with developmental disabilities between the ages of 13 and 17 while ''emerging leaders'' refers to individuals with developmental disabilities between the ages of 18 and 30 with the desire and interest to engage in community leadership and policymaking activities.

Note to Applicants: If multiple years of funding are being requested for the proposed project, the application must identify project objectives for each year.

Priority Area III Minimum Requirements for Project Design

- *Consumer Involvement and Input.* All proposed projects must have an advisory committee that primarily (greater than 51%) consists of youth and emerging leaders and allows youth and emerging leaders to make decisions on how the grant funding will be spent on activities and outcomes of the project.
- *Three Areas of Emphasis.* Activities and outcomes of the center should be related to at least three of the eight areas of emphasis in the DD Act (employment, education, housing, recreation, health, child care, transportation, and quality assurance).
- *Training.* A strong self-advocacy and leadership training component shall be an essential part of the projects, especially for emerging young leaders (such as an emerging leaders partners in policy making curriculum which can be replicated in other States).
- *Information and Referrals.* Proposed projects must include a structure for information and referrals for youth and emerging leaders that parents of youth and emerging leaders, as well as youth related service providers, may also access.
- *Internet Access.* Applicants should demonstrate their capacity to develop youth friendly web-based materials and promote safe use of the internet by youth and emerging leaders.
- *Materials for Dissemination.* The development and dissemination of youth friendly materials on career paths, money management, and healthy lifestyles choices in accessible formats and in languages other than English should be a central theme of the project design.
- *Unserved and Underserved.* Projects shall focus on unserved and underserved youth and emerging leaders in the targeted communities; and the project participation and advisory committee shall reflect the diversity of the targeted communities;
- *Collaboration.* Collaboration with self-advocacy groups, centers for

independent living, parent information and training centers, as well as other organizations, groups, agencies, and foundations interested in youth development, including faith-based and community organizations should play a central role in planning and operating the center.

• *Employment Opportunities.* Projects shall offer opportunities for youth and emerging leaders to be employed by the project.

• *Capacity Building.* Activities of the center should include building the capacity of other youth groups and organizations to include and support youth and emerging leaders, as defined by this Program Announcement, in their on-going programs and regular activities.

• *Community Inclusion.* Activities should include identifying and promoting opportunities for youth and emerging leaders to participate in community events and activities to develop their civic skills and community awareness.

• *Mentoring.* Projects must provide mentoring opportunities, particularly for emerging leaders, to prepare them for careers, community involvement, independent living, and leadership roles.

• *Civil Rights.* Compliance with the Americans with Disabilities Act, where applicable, and section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act Amendments of 1998.

• *Demonstrating Services.* The application must also include an implementation plan for demonstrating the services of the youth center. At a minimum, the following information should be addressed in the applicant's implementation plan:

(1) A criteria and process for selecting the targeted youth, emerging leaders, and community to be served by the center;

(2) A criteria for establishing and measuring the outcomes of the center;

(3) A description of operations and procedures relating to the following:

a. Outreach to and recruitment of youth and emerging leaders;

b. Information and referral systems for youth and emerging leaders, parents, and community organizations with an interest in positive youth development (including faith-based organizations);

c. Training and mentoring plans for at least ten emerging leaders annually; and

d. Ensuring the confidentiality of personal information while protecting the safety of at-risk youth and emerging leaders;

(4) Staffing patterns and staff requirements;

(5) Organizational chart for the center;

(6) Space and equipment requirements;

(7) Timetable for implementing this plan for the center; and

(8) Budget requirements for the center. And

• *Project Meeting:* Each applicant's proposed project budget must include estimated travel expenses (airfare, ground transportations, lodging, etc.) for at least one key project staff member and an emerging leader to attend a three day meeting in Washington, DC with Federal staff on project issues and/or for training and technical assistance.

II. Priority Area III Award Information

Funding Instrument Type: Competitive Grant Initial.

Anticipated Total Priority Area Funding: $1,000,000.

Anticipated Number of Awards: 8 to 10 Grant Awards per budget period.

Ceiling on Amount of Individual Annual Awards: $100,000 per budget period.

Floor of Individual Award Amounts: None.

Average Projected Award Amount: $100,000 per budget period.

Length of Project: This priority area is inviting applications for project periods up to three years. Awards, however, will be made on a competitive basis, for a one-year budget period. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the government.

III. Priority Area III Eligibility Information

1. Eligible Applicants

State Governments, County Governments, City or Township Governments, State Controlled Institutions of Higher Education, Native American Tribal Governments (Federally Recognized), Public Housing Authorities/Indian Housing Authorities, non-profits having 501(c)(3) status with the IRS, other than institutions of higher education, non-profits that do not have 501(c)(3) status with the IRS, other than institutions of higher education, and private institutions of higher learning.

Additional Information on Eligibility:

• Eligible applicants must have a demonstrated record of working in partnership with youth, emerging leaders, community leaders, and others to empower youth and emerging leaders with developmental disabilities to make informed life choices.

• Non-profit organizations must demonstrate proof of non-profit status. Proof of non-profit status is any one of the following:

a. A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code;

b. Copy of a currently valid IRS tax exemption certificate

c. A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or

e. Any of the items in the subparagraphs immediately above for a State or national parent and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Applicants are cautioned that the ceiling for individual awards is $100,000. An application exceeding the $100,000 threshold will be considered non-responsive and returned without review.

2. Cost Sharing or Matching

Grantees must match $1 for every $3 requested in Federal funding to reach 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF/ADD share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds must provide a match of at least $33,333 (the total project cost is $133,333 of which $33,333 is 25%).

Applications that fail to include the required amount of cost-share will be considered non-responsive and returned without review.

3. Other (If Applicable)

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative

agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Applicants are cautioned that the ceiling for individual awards is $100,000. Applications exceeding the $100,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that fail to include the required amount of cost-share will be considered non-responsive and returned without review.

IV. Application and Submission Information

1. Address To Request an Application Package

Valerie Reese, Program Specialist, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Developmental Disabilities, 370 L'Enfant Promenade, SW., Washington, DC 20447. E-mail: *vreese@acf.hhs.gov*, phone: (202) 690–5805, TTY/TDD: (202) 690–6415, fax: (202) 205–8037.

2. Content and Form of Application Submission

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via *Grants.Gov:*

- Electronic submission is voluntary.
- When you enter the Grants.Gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.Gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this Program Announcement and meet the application deadline.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *http://www.Grants.gov*.
- You must search for the downloadable application package by the CFDA number.

Electronic Address where applications will be accepted: *http://www.Grants.gov.*

- *Project Description:* The Project Description is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the Priority Area. The narrative should also provide information concerning how the application meets the evaluation criteria, using the following headings:

(a) *Objectives and Need for Assistance*
(b) *Results and Benefits Expected*
(c) *Approach*
(d) *Organization Profile; and*
(e) *Budget and Budget Justification*

- *Application Package:* Each eligible entity may only submit one application for consideration under this Priority Area.

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

The narrative should be typed double-spaced on a single-side of an 8½″ × 11″ plain white paper, with 1″ margins on all sides, using black print no smaller than 12 pitch or 12 point size. All pages of the narrative, including attachments (such as charts, references/footnotes, tables, maps, exhibits, etc.) and letters of support must be sequentially numbered, beginning with ''Objectives and Need for Assistance'' as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including all attachments and required Federal forms, must not exceed 60 pages. The federally required forms will be count towards the total number of pages. The 60-page limit will be strictly enforced. All pages beyond the first 60 pages of text will be removed prior to applications being evaluated by the reviewers. A page is a single side of an 8½ × 11″ sheet of paper with 1″ margins.

Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose copying difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

- Assurances/Certifications: Applicants are required to submit a SF 424B, Assurances— Non-Construction Programs and the Certification Regarding Lobbying. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants should furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicant must also understand that they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Part C Environmental Tobacco Smoke (also known as the Pro-Children's Act of 1994). By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

In addition, applicants are required under section 162(c)(3) of the Act to provide assurances that the human rights of all individuals with developmental disabilities (especially

those individuals without familial protection) who will receive services under projects assisted under Part E will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities). Each application must include a statement providing this assurance.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

Non-profit applicants must demonstrate proof of their non-profit status and this proof must be included in their application. Proof of non-profit status is any one of the following:

a. A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code;

b. Copy of a currently valid IRS tax exemption certificate;

c. A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals;

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or

e. Any of the items in the subparagraphs immediately above for a State or national parent and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

3. Submission Dates and Times

If you intend to submit an application, please send us a fax or e-mail with the number and title of this Program Announcement, your organization's name and address, your contact person's name, your contact's phone and fax numbers, and their e-mail address. While Letters of Intent are not a requirement for funding consideration, this information will be used to determine the number of experts needed to review applications and to update the mailing list for future Program Announcements from ADD.

Letters of Intent are due July 2, 2004, at the following address: U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Developmental Disabilities, 370 L'Enfant Promenade, SW., Washington, DC 20447. Attention: April Myers. Phone: (202) 690–5985, TTY/TDD: (202) 690–6415, e-mail: *amyers@acf.hhs.gov,* fax: (202) 205–8037.

The closing time and date for receipt of applications is 4:30 p.m. (eastern time zone) on August 2, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade, SW., 8th Floor, Washington, DC 20447. Attention: Lois Hodge.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., at the following address: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade, SW., 8th Floor, Washington, DC 20447. Attention: Lois Hodge.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms:

What to submit	Required content	Required form or format	When to submit
Notice of Intent to Submit.	Applicant's name and contact information.	Fax (202) 205–8037 or e-mail (*amyers@acf.hhs.gov*)	July 2, 2004.
Governor's letter of designation for Applicants under Priority Areas I and II.	Designate the applicant as the lead applicant for the State/Territory by name.	Letter with the Governor's signature, addressed to Commissioner Patricia A. Morrissey, Ph.D.	August 2, 2004.
SF424, SF424a, SF424B	Per required form	May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm*	August 2, 2004.
Project Summary/Abstract.	Summary of application request.	One page limit	August 2, 2004.
Project Description	Responsiveness to evaluation criteria.	Format described in Review and Selection section. Limit 60 pages. Size 12 font, ½′ margins.	August 2, 2004.
Certification Regarding Lobbying.	Per required form	May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm*	August 2, 2004.
Disclosure of Lobbying Activities (SF–LLL).	Per required form	May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm*	August 2, 2004.
Environmental Tobacco Smoke Certification.	Per required form	May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm*	August 2, 2004.

Additional Forms: Private-non-profit organizations are encouraged to submit with their applications the additional survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants''.

What to submit	Required content	Required form or format	When to s/ubmit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/form.htm*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC), Notification Under Executive Order 12372

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Non-Allowable Costs: Reimbursement of pre-award costs, costs for foreign travel, or costs for construction activities are not allowable charges to this Federal grant program.

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Electronic Submission: Please see section IV. 2 Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

V. Application Review Information

1. Evaluation Criteria

Please *see* Generic and Specific Evaluation criteria for Priority Area #1, V.1, ''Application Review Information, Evaluation Criteria'' for crafting your response for the Project Narrative.

2. Review and Selection Process

Please *see* Priority Area #1, V.2, ''Application Review Information, Review and Selection Process,'' for information on the review and selection process for this priority area.

Please note that the Award and Contact information and requirements below are applicable to all three Priority Areas in this Program Announcement.

VI. Award Administration Information

1. Award Notices

Anticipated Announcement and Award Dates: Subject to the availability of funding, ADD intends to award new grants resulting from this Program Announcement during the fourth quarter of Fiscal Year 2004. For the purpose of the awards under this Program Announcement, the successful applicants should expect a project start date of September 30, 2004.

Award Notices: Successful and unsuccessful applicants will be notified of the results of this grant competition within 90 days of the application deadline. Successful applicants will receive by U.S. postal mail a letter signed by the Commissioner of the Administration on Developmental Disabilities (ADD) with an official notice of award (the Financial Assistance Award) signed by the grants management officer.

Administrative and National Policy Requirements:

45 CFR part 74,

45 CFR part 92.

Special Terms and Condition of Award: None.

Special Reporting Requirements: Programmatic Reports and Financial Reports are required semi-annually. All required reports must be submitted in a timely manner, in recommended formats (to be provided), and the final report must also be submitted on disk or electronically using a standard word-processing program.

VII. Agency Contacts

Program Office Contact: April Myers, Program Specialist, 370 L'Enfant Promenade, SW., Washington, DC 20447. Phone: (202) 690–5985, TTY/TDD: (202) 690–6415, e-mail: *amyers@acf.hhs.gov*, fax: (202) 205–8037.

Grants Management Office Contact: Lois Hodge, Grants Officer, 370 L'Enfant Promenade, SW., Washington, DC 20447, (202) 401–2344, e-mail: *lhodge@acf.hhs.gov.*

VIII. Other Information

http://www.acf.hhs.gov/programs/add/.

Dated: June 7, 2004.

Patricia A. Morrissey,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 04–13509 Filed 6–16–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Integrated Research Facility Record of Decision

ACTION: Notice.

SUMMARY: The Department of Health and Human Services, The National Institutes of Health (NIH), has decided, after completion of a Final Environmental Impact Statement (EIS) and a thorough consideration of public comments on the Draft EIS and Supplemental Draft EIS, to implement the Proposed Action, which is identified as the Preferred Alternative in the Final EIS. This action involves construction and operation of an Integrated Research Facility and associated infrastructure improvements by the NIH at the Rocky Mountain Laboratories campus in Hamilton, Montana.

FOR FURTHER INFORMATION CONTACT: Valerie Nottingham, Chief of the Environmental Quality Branch, Division of Environmental Protection, Office of Research Facilities Development and Operations, NIH, Building 13, Room 2W64, 9000 Rockville Pike, Bethesda, MD 20892, telephone 301–496–7775, Fax 301–480–8056, e-mail *orsrmleis-r@mail.nih.gov.*

SUPPLEMENTARY INFORMATION:

Decision

After careful review of the environmental consequences in the Final Environmental Impact Statement (FEIS), Rocky Mountain Laboratories (RML), Integrated Research Facility, dated May 2004, and consideration of public comment throughout the NEPA process, the NIH has decided to implement the Proposed Action described below as the Selected Alternative.

Selected Alternative

The NIH plans to construct an Integrated Research Facility (IRF) to expand the research capability of RML. Research to be conducted within the IRF includes infectious disease pathogenesis and immune response studies, development of candidate vaccines, diagnostic reagents and assays and therapeutic approaches. This work will focus and build upon RML's strength in vector-borne disease research. The RML does not and will not conduct research to develop offensive-biological weapons.

The IRF will contain Biosafety Level (BSL)–2, BSL–3, and BSL–4 laboratories, animal research facilities, administrative support offices, conference rooms, and break areas at RML in Hamilton, Montana. The facility would encompass approximately 105,000 square feet of building constructed within the existing 33-acre RML campus in the southwest portion of Hamilton.

The Integrated Research Facility and research programs would require additions and upgrades to the existing RML campus, including:

- A new chilled water plant and emergency power backup system;
- A new addition to Boiler Building 26 to house a new natural gas-fired boiler; and
- Construction of below grade systems and utility distribution tunnels to service the Integrated Research Facility.

The BSL–4 laboratory would be constructed within the Integrated Research Facility to provide the highest possible level of protection for scientists and the public. The BSL–4 laboratory would be located within the central core of the Integrated Research Facility, surrounded by a corridor that serves as a buffer between the laboratory and the exterior. Specially designed mechanical ventilating systems assure that negative pressure will be maintained for containment purposes. Other containment design features such as positive pressure sealed doors and airlocks will also be employed to assure containment. All effluent and emissions from the proposed laboratory would be treated in accordance with stringent, state of the art standards and practices. A facility operations manual, developed specifically for the integrated research facility, will be prepared and adopted prior to operation of the laboratory. Stringent safeguards, including engineering and design features and rigorous adherence to procedural requirements are necessary in BSL–3 and BSL–4 laboratory facilities to protect workers and prevent release of pathogens into the environment. Additionally, areas for the secure storage of pathogens will be provided.

Alternatives Considered

The NIH considered the two reasonable alternatives identified and considered in the FEIS: (1) The Proposed Action Alternative (now the selected alternative) and (2) the No Action Alternative (not constructing the Integrated Research Facility). Other alternatives considered but eliminated from detailed analysis included constructing the Integrated Research Facility at the NIH Campus in Bethesda, Maryland; constructing it at some other location outside RML; moving RML to a less populated area; and constructing and administering an Integrated Research Facility by another agency or at another National Institutes of Health facility. Based on the Purpose and Need for the project and environmental consequences of the Proposed Action, only the No Action Alternative was considered in detail and effects analysis documented. The other alternatives were considered, but not given detailed study. They did not meet the Purpose and Need of the Proposed Action (FEIS page 2–17).

Factors Involved in the Decision

Several factors were involved in the NIH's decision to proceed with the Proposed Action. Based on analyses in the Draft EIS, Supplemental Draft EIS, and Final EIS, the Proposed Action best satisfies the stated Purpose and Need, which is ''to provide a highly contained and secure intramural laboratory dedicated to studying the basic biology of agents of emerging and re-emerging diseases, some of which have potential as bioterrorism agents.'' Because of its traditional strengths in the area of vector-borne infectious disease research and the federal funding parameters associated with National Institute of Allergy and Infectious Diseases' (NIAID)

intramural research program, the Integrated Research Facility is proposed to be located at RML.

The President and the Congress expanded the NIAID's mission to include basic and applied research aimed at addressing specific issues outlined in the national bio-defense response plans. The RML in Hamilton, Montana is the proposed location for a new high containment research facility because of the RML's historic strengths. The long, distinguished, and continuing history of RML in vector-borne agents would facilitate and expedite research on these agents. To achieve these expanded research goals, scientists at RML need additional laboratory facilities, particularly those that provide the appropriate environment to work on certain high consequence pathogens and emerging infectious disease agents.

The type of research proposed for the Integrated Research Facility fits precisely with expertise at RML. Part of the biodefense research plan is to study vector-borne (tick and flea) agents. The long, distinguished, and ongoing history of RML in this area will facilitate and thus expedite research on agents of this type. The level of expertise in this area at RML is unmatched at any other possible site. The unparalleled scientific climate at RML has for over 100 years fostered superior dedication and technical expertise in combating infectious and re-emerging infectious diseases. From the discovery of the causative agents of Rocky Mountain Spotted Fever by Dr. Howard Rickets and Lyme Disease by Dr. Willy Burgdorfer to the development of a plague vaccine, which proved to be 100% effective, the RML has been and is one of the world's premier research laboratories.

Integration of new BSL–3 and BSL–4 laboratories into the current RML facility provides the most benefit from the public monies to be invested and provides additional benefit in terms of the time it will take to provide functioning high and maximum containment laboratories in which to conduct the needed research invested. Fulfillment of the research mandate requires timely and effective response to the threats of emerging and re-emerging infectious diseases and bioterrorism, which is facilitated by building on the available scientific resources and research infrastructure present at RML. Relocation of the RML scientific community, if even possible, would result in years of unacceptable delay while duplicating the infrastructure already present at RML. Replicating the specialized laboratory facility to maintain the colonies and collections of the insect vectors necessary for support of the RML research mission will result in unacceptable research delays even if appropriately trained personnel could be hired at or moved to a new location. In addition, moving all or part of this program to another location would disrupt the research synergy found within the unique scientific community at RML.

The No Action alternative would result in the laboratory not being built at RML. The No Action alternative would not meet the needs of NIAID.

Resource Impacts

The Final Environmental Impact Statement (FEIS) describes potential environmental effects of the proposed project. These potential effects are documented in the FEIS in Chapter 4. The Integrated Research Facility would result in minor to negligible disruption of the physical and biological environment. Adverse environmental effects are avoided through compliance with existing regulatory requirements, application of design features, and adherence to construction requirements. Potential impacts on the economy, visual resource, historical resources, air quality, water supply, and wastewater are all within government standards (federal, state, and local), therefore; the NIH is confident that there would not be negative effects on the environment or on the citizens of Hamilton.

Summary of Impacts

The following is a summary of potential impacts resulting from the Proposed Action the NIH considered when making its decision.

Social Resources

Additional employment associated with the proposed Integrated Research Facility includes up to 200 workers at the peak of construction and up to 100 employees in late 2005/early 2006 when the facility would be opened. Based on the Ravalli County rate of 2.45 persons per household, this would add a total of 245 new residents to the county. This represents between 1.4 percent and 3 percent of all new residents projected for the County, based on estimates in the Ravalli County Economic Needs Assessment (Swanson, 2002). Addition of new homes would result in increased business for homebuilders and real estate developers. School capacity is adequate for new growth, but operating and maintenance costs would increase to accommodate the new students. No impact is expected on the ethnic or gender make-up of the population.

Traffic near the RML campus associated with construction and delivery of equipment and materials would increase over the 2-year construction period. Following construction, traffic levels would likely remain elevated due to the 100 new employees at RML (approximately 20 percent during peak hours), although large truck traffic to support RML would return to current levels.

Community Risk

Many people stated concerns with the Proposed Action throughout the comment periods. These concerns mainly related to the perceived threat the facility posed to the local community. In response to the safety concerns raised by citizens, NIH completed a risk assessment (FEIS page 4–5). The risk assessment indicated that there is essentially no risk to the community from release of infectious agents. Additionally, the safety record of BSL–4 laboratories worldwide is documented (see Appendix D of the FEIS) and shows that there has never been a community release of a biological agent from a modern maximum containment laboratory. The Proposed Action does not pose a measurable risk to the neighboring community from escaped agents.

Qualitative and quantitative risk analysis revealed that the potential risk to the community surrounding the Rocky Mountain Laboratories and specifically the Integrated Research Facility from a release of infectious agents is negligible.

Economic Resources

The Proposed Action would have direct economic impacts on both the City of Hamilton and Ravalli County throughout construction and operation. Payroll associated with construction of the Integrated Research Facility is estimated at $4.7 million. Using the current economic multiplier in the 2002 Ravalli County Needs Assessment, approximately $18.9 million in economic activity would be gained in the 2-year construction period.

Annual payroll for 100 new employees is estimated at $6.6 million. Added to the current $10.4 million annual payroll, RML would contribute $17 million annually to the local economy. RML and the proposed Integrated Research Facility meet community goals listed in the 2002 Ravalli County Economic Needs Assessment, Ravalli County Growth Policy, and the City of Hamilton Comprehensive Master Plan.

Public finance revenues would increase from income tax on the Integrated Research Facility-related construction and operations payrolls, as

well as income of spouses and older children of anticipated additional RML employees, increased number of licensed vehicles, and property tax revenues from additional new homes and property assessments.

Noise

Equipment operated during construction of the Integrated Research Facility would result in additional noise at the site. With specified noise reduction measures, the Integrated Research Facility would meet RML's 2003 noise guidelines. Recently implemented noise reduction features and reasonably foreseeable actions have and would reduce noise further.

Visual Quality

The primary visual impact of the Proposed Action would be addition of a large building (Integrated Research Facility) into an area of existing buildings on the RML campus. Existing and proposed ventilation stacks associated with the Boiler Plant would create vertical linear contrast to surrounding structures. Ventilation stacks on the Integrated Research Facility would not be visible from surrounding neighborhoods. Proposed landscaping around the Integrated Research Facility would have a positive impact on visual quality at the RML.

Historical Resources

The Proposed Action would be partially visible from the RML Historic District. The Integrated Research Facility could affect the view from the historic district, but there would be no adverse effect on the qualities inherent in the Historic District.

Air Quality

Gaseous and particulate air contaminant emissions would be generated during normal laboratory operations. Source emissions would comply with all air quality standards. Use of the incinerator to dispose of refuse generated at the facility, including that generated by the Integrated Research Facility, would increase from 2–3 days/week to 3–4 days/week. Permit limits (Montana Air Quality Permit 2991–04) on the incinerator would not be exceeded.

Water Supply and Wastewater

The estimated increase in water usage of 17,000 gallons per day represents about a 1 percent increase in the amount of water pumped by the City of Hamilton Department of Public Works (CHDPW) on a daily basis. With respect to available capacity, the Integrated Research Facility would use about 5.3 percent (12 gallons per minute of 226 gallons per minute) of system capacity. Increased demand for water caused by operation of the Integrated Research Facility would have a minor impact on the CHDPW municipal water supply system, and the system would be able to handle the increased demand.

Approximately 1,000 to 1,200 pounds of solids per day are currently handled at the CHDPW. (Lowry 2003). The Integrated Research Facility would generate an estimated 28 pounds of additional solids; representing a 2.3 to 2.8 percent increase in solids load to the CHDPW wastewater facility.

The Proposed Action would not have an impact on the solids handling capacity at the CHDPW because the planned upgrade of the solids handling capacity at the facility would accommodate current and future needs of Hamilton as well as additional solids produced by the Integrated Research Facility.

Practicable Means To Avoid or Minimize Potential Environmental Harm From the Selected Alternative

All practicable means to avoid or minimize adverse environmental effects from the selected action have been identified and incorporated into the action.

Pollution Prevention

Pollution prevention measures are described in Chapter 2 of the FEIS and reflect standard spill prevention procedures. Additional pollution from the Integrated Research Facility is not anticipated. Air quality permit standards would be met, as would all federal, state, and local requirements to protect the environment and public health. Additional pollution prevention methods would include:

- Reducing construction waste by recycling materials wherever possible;
- Applying best management practices (BMPs) during construction to minimize soil erosion and potential airborne particulate matter; and
- Requiring that IRF activities comply with the NIH waste management policies, which emphasize source segregation, inactivation, source reduction, reuse, and recycling.

Monitoring and Enforcement Program for Mitigation Measures

During the preparation of the FEIS, several potential environmental issues associated with implementation of the Proposed Action were identified. The local community is concerned about noise during construction and operation of the Integrated Research Facility. To mitigate noise associated with these activities, measures have been included to reduce noise during construction, along with noise generated by eventual operation of the Integrated Research Facility. Noise levels associated with the current facility have been reduced through installation of noise deadening equipment. During construction of the Integrated Research Facility, hours of construction would be limited to avoid disturbing the community at night. A professional acoustics contractor would monitor noise periodically, to ensure that noise generated at RML is within the established voluntary guidelines.

RML has facilitated the formation of a group of local community representatives (the Community Liaison Group) to maintain communication with the community about operation of RML. This group would be able to bring community concerns to RML and work on resolutions.

Emergency planning was raised as a concern. RML currently has an emergency plan, which will be updated before the Integrated Research Facility becomes operational. Emergency responders in the area are confident that they would be capable of handling emergency situations.

Comments suggested that the Integrated Research Facility would be a target for terrorists. Increased security measures required of all government facilities today reduce this possibility. Rigorous security and surveillance measures will be in place to prevent unauthorized use or removal of biological material.

Redundancy of safety equipment and procedures, operational safeguards, and monitoring systems inherent in biocontainment laboratories reduce the risk of an accidental release. Theoretically, human error or multiple, simultaneous mechanical failures could lead to accidental release of biological materials from a laboratory. These types of failures were addressed in the risk assessments performed. The results of the risk assessments and overall safety record of NIAID laboratories indicate that there is little or no increased risk of accidental release of infectious agents to the environment.

Transportation of agents to and from the Integrated Research Facility was a concern for some. Strict rules and regulations govern how agents are packaged, labeled, handled, tracked and transported. There is no greater risk to the surrounding community from the transport of biological material than there is anywhere else along the transport path.

In addition, possible adverse health and safety impacts on laboratory workers in the proposed IRF and on

nearby residents during the operational phase of the project were evaluated. The risks were deemed to be negligible, and mitigable through adherence to guidelines outlined in Biosafety in Microbiological and Biomedical Laboratories, a joint publication of the NIH and Centers for Disease Control, as well as other standards for safe operational practices.

Conclusion

Based upon review and careful consideration, the NIH has decided to implement the Proposed Action, the construction of the Integrated Research Facility at the Rocky Mountain Laboratories in Hamilton, Montana.

The decision was based upon review and careful consideration of the impacts identified in the Final EIS; public comments received throughout the National Environmental Policy Act process, including comments on the Draft EIS and Supplemental Draft EIS and those provided during the required 30-day waiting period for the Final EIS. Other relevant factors included in the decision, such as NIAID's mandate to conduct research on agents of emerging and re-emerging infectious diseases were carefully considered. The unique scientific capabilities of the scientists at the RML, who require the selected alternative in order to perform their expanded research mission, was also a factor in the decision making process.

Dated: June 7, 2004.

Leonard Taylor, Jr.,

Acting Director, Office of Research Facilities Development and Operations, National Institutes of Health.

[FR Doc. 04–13642 Filed 6–16–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Identification of a Tricyclic Amino Amide (NSC–644221) Inhibitor of the Hypoxic Signaling Pathway

Giovanni Melillo (NCI).

DHHS Reference Nos. E–185–2004/0–US–01 and E–185–2004/1–US–01.

Licensing Contact: George Pipia; 301/435–5560; *pipiag@mail.nih.gov.*

This invention describes the identification of a tricyclic (1,4-dioxane) amino amide with confirmed potent activity in inhibiting HIF–1 transcriptional activity.

HIF–1 is a transcription factor and plays an important role in adaptation of cancer cells to an hypoxic environment. HIF–1 significantly increases the ability of cancer cells to survive under strenuous conditions. It contributes to the ability of cancer cells to migrate and invade surrounding tissue, and is important for the formation of new blood vessels that are essential for growth and metastasis of cancer cells. Thus HIF–1 mediates survival and spreading of cancer cells. Previous studies have shown that HIF–1 is also important in human cancers, and therefore, inhibition of HIF–1 activity is contemplated in the field as a therapy for cancer patients.

The inventors, using a cell-based high throughput screen, identified a new compound, NSC–644221, with potent inhibitory activity of the HIF–1 pathway. The compound inhibits expression of HIF–1 and reduces its accumulation in the cell. This compound also inhibits expression of endogenous genes that are under control of HIF–1, such as Vascular Endothelial Growth Factor (VEGF) that is essential for the formation of new blood vessels. The NIH inventors currently are testing the compound in angiogenesis assays and are starting preclinical studies of the compound using animal cancer models.

SH2 Domain Binding Inhibitors

Terrence R. Burke, Jr., Zhen-Dan Shi, Kyeong Lee (NCI).

U.S. Provisional Application No. 60/504,241 filed 18 Sep 2003 (DHHS Reference No. E–315–2003/0–US–01).

Licensing Contact: George Pipia; 301/435–5560; *pipiag@mail.nih.gov.*

The present invention provides for ultra-potent Grb2 SH2 domain-binding compounds, or a pharmaceutically acceptable salt thereof. The compounds of the present invention represent tetrapeptide mimetics whose conformation is constrained through macrocyclization. Low picomolar binding affinity is achieved in *in vitro* Grb2 SH2 domain binding assays. Addition of covered agent to the extracellular media of erbB–2 over-expressing breast cancer cells at low nanomolar concentrations results in effective intracellular blockade of Grb2 association with activated cytoplasmic erbB–2 tyrosine kinase. Antimitogenic effects are observed in erbB–2-dependent breast cancer cells in culture at sub-micromolar concentrations. The present invention further provides a pharmaceutical composition comprising a pharmaceutically or pharmacologically acceptable carrier and a compound of the present invention. The present invention also provides a method for inhibiting an SH2 domain from binding with a phosphoproteins comprising contacting an SH2 domain with a compound of the present invention. The present invention also provides a method of preventing or treating a disease state or condition by the use of the compound. While the invention has been described and disclosed below in connection with certain embodiments and procedures, it is not intended to limit the invention to those specific embodiments. Rather it is intended to cover all such alternative embodiments and modifications as fall within the spirit and scope of the invention.

This research is described, in part, in: Z. Shi *et al.*, ''A novel macrocyclic tetrapeptide mimetic that exhibits low-picomolar Grb2 SH2 domain-binding affinity,'' Biochem. Biophys. Res. Commun. (2003 Oct 17) 310(2):378–383, doi:10.1016/j.bbrc.2003.09.029; Z. Shi *et al.*, ''Synthesis of a 5-methylindolyl-containing macrocycle that displays ultrapotent Grb2 SH2 domain-binding affinity,'' J. Med. Chem. (2004 Feb 12) 47(4):788–791, doi:10.1021/jm030440b.

Dated: June 4, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–13641 Filed 6–16–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Integrative Cancer Biology Program.

Date: July 7–9, 2004.

8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz Carlton Washington DC, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Brian E. Wojcik, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8019, Bethesda, MD 20892, 301/402–2785.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13654 Filed 6–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Colorectal Cancer Screening.

Date: July 7, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive boulevard, Room 8088, Rockville, MD 20852, 301/594–1279.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13655 Filed 6–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(b)(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Meetings/Networks for Methodological Development.

Date: July 15–16, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892, (301) 594–1286, peguesj@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399 Cancer Control, National Institutes of Health, HHS)

Dated: June 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13663 Filed 6–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Subcommittee G—Education, June 16, 2004, 8 a.m. to June 18, 2004, 5 p.m., Sheraton Suites Alexandria, 801 North Saint Asaph Street, Alexandria, VA, 22314 which was published in the **Federal Register** on June 2, 2004, 69 FR 104.

The meeting is amended to change the end date from 6/18/2004 to 6/17/2004. The meeting is closed to the public.

Dated: June 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13664 Filed 6–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Review of Program Project Applications (PO1s).

Date: July 7, 2004.

Time: 8:30 a.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Review of NIH Clinical Trial Planning Grant Programs (R34s).

Date: July 16, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13656 Filed 6–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Mutant Mouse Lines.

Date: June 23, 2004.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Ave, Suite 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7703, *markowsa@nia.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: National Institute on Aging Special Emphasis Panel; Vascular Aging.

Date: July 7–8, 2004.

Time: 7 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Age and Hearing Loss.

Date: July 14–15, 2004.

Time: 7 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Developmental Trajectory Studies.

Date: July 25–26, 2004.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Berkeley Marina, 200 Marina Blvd, Berkeley, CA 94710.

Contact Person: Jon Rolf, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 402–7703, *rolfj@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13657 Filed 6–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Dental & Craniofacial Research, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Dental and

Craniofacial Research; Oral and Pharyngeal Cancer Branch and Functional Genomics Unit.

Date: June 20–22, 2004.

Closed: June 20, 2004, 7 p.m. to 8:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, 30 Convent Drive, Bethesda, MD 20892.

Open: June 21, 2004, 8:30 a.m. to 11:45 a.m.

Agenda: Laboratory presentations.

Place: National Institutes of Health, Building 30, 30 Convent Drive, Bethesda, MD 20892.

Closed: June 21, 2004, 11:45 a.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, 30 Convent Drive, Bethesda, MD 20892.

Open: June 21, 2004, 2 p.m. to 4 p.m.

Agenda: Laboratory presentations.

Place: National Institutes of Health, Building 30, 30 Convent Drive, Bethesda, MD 20892.

Closed: June 21, 2004, 4 p.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30 30 Convent Drive, Bethesda, MD 20892.

Open: June 22, 2004, 8:30 a.m. to 11:45 a.m.

Agenda: Tour of Labs, Poster Presentations.

Place: National Institutes of Health, Building 30, 30 Convent Drive, Bethesda, MD 20892.

Closed: June 22, 2004, 11:45 a.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, 30 Convent Drive, Bethesda, MD 20892.

Contact Person: Norman S. Braveman, Assistant to the Director, NIH—NIDCR, 31 CENTER DRIVE, BLDG. 31, ROOM 5B55, BETHESDA, MD 20892, 301 594–2089, *Norman.Braveman@NIH.GOV.*

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

Information is also available on the Institute's/Center's home page: <*http://www.nidcr.nih.gov/about/CouncilCommittees.asp*>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13658 Filed 6–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, July 20, 2004, 8 a.m. to July 20, 2004, 5 p.m., Bethesda, Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD, 10817 which was published in the **Federal Register** on May 28, 2004, 69 FR 30687.

This meeting was cancelled due to the time and new location.

Dated: June 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13660 Filed 6–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Scientist Development Awards for New Minority Faculty, July 15, 2004.

Date: July 15, 2004.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1226, *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13661 Filed 6–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Fellowships in Interventions.

Date: July 1, 2004.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1226, *aschulte@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award;

93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13662 Filed 6–16–04; 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 meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6, Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Renal and Urological Studies Integrated Review Group; Cellular and Molecular Biology of the Kidney Study Section.

Date: June 14–15, 2004.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198, *hildens@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; Angiogenesis and Cancer Biology.

Date: June 29, 2004.

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: Hungyi Shau, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–435–1720, *shauhung@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Consequences of HIV/AIDS Study Section.

Date: July 1–2, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; L-Fellowships: Cell Development.

Date: July 1–2, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Richard D. Rodewald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024, *rodewalr@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS-associated Opportunistic Infections and Cancer Study Section.

Date: July 1–2, 2004.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuro-Tech SBIR.

Date: July 1, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Community Level Health Promotion.

Date: July 1, 2004.

Time: 12:30 p.m. to 3:30 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: Gertrude K. McFarland, RN, FAAN, DNSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, (301) 435–1784, *mcfarlag@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nursing Science Children and Families.

Date: July 2, 2004.

Time: 12:30 p.m. to 3:30 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: Gertrude K. McFarland, RN, FAAN, DNSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, (301) 435–1784, *mcfarlag@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 9, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–13659 Filed 6–16–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in June 2004.

A portion of the meeting will be open and will include a roll call, general announcements, Director's and Administrator's Reports, and discussions about activities and initiatives critical to Mental Health Transformation. A panel on Mental Health Transformation State Incentive Grants (SIG) will include presentations from key mental health officials, State as well as Federal, regarding ideas for the design of a SIG program and transformation initiatives begun in states. Representatives from Federal Agencies and Departments who are partners on implementing mental health transformation will discuss their strategies to transform mental health care throughout our States and communities. In addition, CMHS staff will discuss two activities: an anti-

bullying campaign and the elimination of barriers initiative.

Public comments are welcome. Attendance by the public will be limited to space available. Please communicate with the individual listed as contact below for guidance. If anyone needs special accommodations for persons with disabilities please notify the contact listed below.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2. section 10(d).

A summary of the meeting and a roster of Council members may be obtained from Ms. Dale Kaufman, Executive Secretary, CMHS, Room 17-C–14, Parklawn Building, Rockville, Maryland 20857, telephone (301) 443–2660. The transcript for the open session will be available on the following Web site: *www.samhsa.gov.*

Committee Name: Center for Mental Health Services, National Advisory Council.

Meeting Date: June 16–17, 2004.

Place: Parkview Room, Hotel Washington, 15th and Pennsylvania Ave., NW., Washington, DC.

Type:

Open: June 16, 2004 9 a.m.–4:30 p.m. June 17, 2004 10:30 a.m.–12 noon.

Closed: June 17, 2004 9 a.m.—10:30 a.m.

Contact: Dale Kaufman, MPH, MA, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 17–99, Rockville, Maryland 20857, Telephone: (301) 443–2660 and FAX (301) 443–1563.

Dated: June 10, 2004.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–13676 Filed 6–16–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by July 19, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Kurt D. Divan, Dubois, WY, PRT–087946.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Louis T. Titus, Plattsmouth, NE, PRT–087923.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Shane C. Westcott, Holdrege, NE, PRT–088013.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: John L. Fullmer, Morgantown, WV, PRT–087530.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

Applicant: Calvin A. Speckman, Pleasant Hill, OR, PRT–087541.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Melville polar bear population in Canada for personal use.

Applicant: John D. Pearson, Long Grove, IL, PRT–087955.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Michael R. Traub, Helenville, WI, PRT–087917.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Rick G. Duggan, Morrison, CO, PRT–087960.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Dated: May 28, 2004.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–13704 Filed 6–16–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for scientific research permits to

conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended.

DATES: To ensure consideration, written comments must be received on or before July 19, 2004.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW, Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, (505) 248–6922.

SUPPLEMENTARY INFORMATION:

Permit No. TE–086559

Applicant: Ricky Lee Jones, Tulsa, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for and translocate American burying beetles (*Nicrophorus americanus*) within Oklahoma.

Permit No. TE–087167

Applicant: Constance Dustin Becker, Zuni, New Mexico. Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys and nest monitoring for southwestern willow flycatchers (*Empidonax traillii extimus*) within New Mexico.

Permit No. TE–088876

Applicant: Mark Kaltenbach, Santa Fe, New Mexico. Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys and nest monitoring for southwestern willow flycatchers (*Empidonax traillii extimus*) within New Mexico.

Permit No. TE–088890

Applicant: Priscilla Titus, Tucson, Arizona. Applicant requests a new permit for research and recovery purposes to conduct presence/absence and monitoring surveys for the following species in Arizona, New Mexico, and Texas: Lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*), Hualapai Mexican vole (*Microtus mexicanus hualpaiensis*), cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), southwestern willow flycatcher (*Empidonax traillii extimus*), Yuma clapper rail (*Rallus longirostris yumanensis*), Sonoran tiger salamander (*Ambystoma tigrinum stebbinsi*), desert pupfish (*Cyprinodon macularius*), and Gila topminnow (*Poeciliopsis occidentalis*).

Permit No. TE–021881

Applicant: TRC Co., Inc., Albuquerque, New Mexico. Applicant requests an amendment to an existing permit to allow presence/absence surveys for the following species within New Mexico: black-footed ferret (*Mustela nigripes*), interior least tern (*Sterna antillarum*), and northern aplomado falcon (*Falco femoralis septentrionalis*).

Permit No. TE–814841

Applicant: Desert Botanical Garden, Phoenix, Arizona. Applicant requests an amendment to an existing permit to allow collection of Sacramento prickly-poppy (*Argemone pliecantha var. pinnatisecta*) within New Mexico and Arizona cliffrose (*Purshia subintegra*) within Arizona.

Authority: 16 U.S.C. 1531, *et seq.*

Dated: June 4, 2004.

Stuart Leon,

Acting Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 04–13706 Filed 6–16–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for an Endangered Species Permit

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of receipt.

SUMMARY: The following applicant has applied for a permit to conduct certain activities with an endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–TE085765

Applicant: University of Maine, Orono, Maine.

DATES: Written data or comments on this application must be received at the address given below by 30 days from date of publication.

ADDRESSES: Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035. Attention: Diane Lynch, Regional Endangered Species Permits Coordinator, telephone: (413) 253–8628; facsimile: (413) 253–8482.

FOR FURTHER INFORMATION CONTACT: Diane Lynch, telephone: 413–253–8628; facsimile: 413–253–8482.

SUPPLEMENTARY INFORMATION: You are invited to comment on the application from the University of Maine, PRT–TE085765. This application requests authorization to take (harass, in the form of stress, and kill) Gulf of Maine, distinct population segment (DPS), Atlantic salmon (*Salmo salar*) stocks, for scientific purposes. DPS stocks for this study include stock from the Denny's, Machias, East Machias, Pleasant, Sheepscot, and Narraguagus Rivers. No wild fish will be used in this study, only stocks currently propagated at the Craig Brook National Fish Hatchery. This proposal seeks to monitor and evaluate certain tasks associated with juvenile salmon stocking and survival. The proposed plan of study will include: Tagging of juvenile salmon (PIT tags) in order to follow life history variation through time to smoltification; lethal sampling of stocked fry in order to sample otoliths; and a diet study in order to better understand competition within a focal study system.

Dated: June 1, 2004.

Marvin E. Moriarty,

Regional Director, Region 5, Fish and Wildlife Service.

[FR Doc. 04–13707 Filed 6–16–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

Marine Mammals

Permit number	Applicant	Receipt of application *Federal Register* notice	Permit issuance date
082265	Anthony B. Bouneff	69 FR 5568; February 5, 2004	May 21, 2004.
080829	John R. Beckstrand	68 FR 75618; December 31, 2003	May 14, 2004.
081755	James M. Williams	69 FR 5569; February 5, 2004	May 14, 2004.

Dated: May 28, 2004.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–13703 Filed 6–16–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council Meeting Announcement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). The meeting is open to the public.

DATES: July 13, 2004, 1–3:30 pm.

ADDRESSES: The meeting will be held at the Delta Lodge at Kananaskis, Kananaskis Village, Alberta, Canada. The Council Coordinator is located at the U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop: MBSP 4501–4075, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: David A. Smith, Council Coordinator, (703) 358–1784 or *dbhc@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement, and management projects for recommendation to, and final funding approval by, the Commission. Proposal due dates, application instructions, and eligibility requirements are available through the NAWCA Web site at *http://birdhabitat.fws.gov.* Proposals require a minimum of 50 percent non-Federal matching funds. Canadian and U.S. Standard grant proposals will be considered at the Council meeting. The tentative date for the Commission meeting is September 8, 2004.

Dated: May 28, 2004.

Paul Schmidt,

Assistant Director—Migratory Birds and State Programs.

[FR Doc. 04–13705 Filed 6–16–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Extension of Existing Information Collection To Be Submitted to OMB for Review Under the Paperwork Reduction Act

A request extending the information collection described below will be submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)). Copies of the proposed collection may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments on the proposal should be made within 60 days to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: User Survey for National Biological Information Infrastructure (NBII).

OMB Approval No.: 1028–0069.

SUMMARY: The collection of information referred herein applies to a voluntary survey that allows visitors to the NBII World-Wide Web site (*http://www.nbii.gov*) the opportunity to provide feedback on the utility and effectiveness of the NBII operation and contents in meeting their needs.

Estimated Completion Time: 3 minutes.

Estimated Annual Number of Respondents: 3000.

Frequency: Once.

Estimated Annual Burden Hours: 150 hours.

Affected Public: Public and private, individuals and institutions.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313, or go to the Web site (*http://www.nbii.gov*).

Dated: June 9, 2004.

Susan Haseltine,

Associate Director for Biology.

[FR Doc. 04–13599 Filed 6–16–04; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability, Midnite Uranium Mine Natural Resource Damage Assessment Plan, Part I: Injury Determination

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior (represented by the Bureau of Indian Affairs, the Fish and Wildlife Service, and the National Park Service), the Spokane Tribe of Indians, and the Confederated Tribes of the Colville Reservation (the Trustees) announce the release for public review of the Midnite Uranium Mine Natural Resource Damage Assessment Plan, Part I: Injury Determination. This Assessment Plan was developed by the Midnite Uranium Mine Natural Resource Trustee Council, consisting of representatives of the Trustee agencies listed above. The purpose of the Plan is to communicate the Trustees' proposed approach for determining injury to natural resources resulting from the release of hazardous substances from the Midnite Mine Superfund Site, an associated uranium mill site, haul road and other areas to potentially responsible parties (PRPs) and the public so that these stakeholders can productively participate in the assessment process. All interested parties are invited to submit comments on the Assessment Plan.

DATES: Comments on the Assessment Plan are due on or before July 19, 2004.

ADDRESSES: Written comments should be sent to the Lead Administrative Trustee: Spokane Tribe of Indians, Department of Natural Resources, c/o Dr. F.E. Kirschner, P. O. Box 312, Valleyford, WA 99036 (Telephone (509) 924–0184, Facsimile (509) 924–4515, E-mail: *fredk@icehouse.net*). The Assessment Plan is available for review at the Spokane Indian Reservation, Department of Natural Resources Reading Room, Wellpinit, WA 99040. The Assessment Plan is available for public inspection during normal business hours by appointment.

FOR FURTHER INFORMATION CONTACT: Dr. F. E. Kirschner, (509) 924–0184.

SUPPLEMENTARY INFORMATION:

Background

This Assessment Plan addresses the Trustees' approach for determining injury to natural resources resulting from the release of hazardous substances from the Midnite Mine Superfund Site (Mine), including its associated uranium mill (Mill), haul road, and other areas where hazardous substances have come to be located (the facility or Assessment Area). The Mine is an inactive, open-pit uranium mine situated entirely within the boundaries of the Spokane Indian Reservation in eastern Washington. The Mine's impacted areas include two large water-filled mining pits, several mining pits now backfilled with mine waste and waste rock, a retention pond, a leachate collection pool, outfall ponds and seeps, at least eight abandoned uranium ore and protore piles, large mining spoils disposal areas, a mine water treatment plant, a system of weirs, ditches, and sumps for seepage collection, and various buildings housing pump equipment and storage tanks for collected seep water. The uranium Mill is located near the town of Ford, Washington, northwest of the City of Spokane. The Mill is comprised of a number of buildings, 14 acres of storage pads where uranium ore was stockpiled prior to milling, and a tailings disposal area. The haul road, a public road used for hauling uranium ore from the Mine to the Mill, runs for approximately 20 miles through the communities of Wellpinit and Ford.

The Dawn Mining Company and/or Newmont Mining Company (the Companies) operated the Mine from 1955 to 1981. The Mill was operated by the Companies from 1956 until 1982, then from 1992 to 2000 limited operations resumed for the processing of water treatment plant sludge from the Mine. Uranium ore was transported over the haul road throughout the period of Mine operation. More recently it has been used to haul water treatment plant sludge.

Beginning in the 1950s and continuing today, hazardous substances, including radiological and non-radiological contaminants, have been released into groundwater, surface water, and air in the Assessment Area. As a result, natural resources of the Blue Creek, Sand Creek, Chamokane Creek watersheds, portions of the Spokane River, the Spokane Arm of Lake Roosevelt, and other areas have been exposed to elevated levels of hazardous substances.

In 2000 the U.S. EPA listed the Mine site on the Superfund National Priorities List. A Remedial Investigation/Feasibility Study is being developed, and response actions at the Mine include development of a control system for the management of drainage water. Cleanup of the Mill is under the authority of the Washington State Department of Health. A Groundwater Remedial Action Plan was put in place at the Mill in 1992; the effectiveness of this plan is being evaluated under a Corrective Action Assessment Plan. Removal actions to address contamination along the haul road are currently under consideration. Despite these past actions, releases of hazardous substances from the Assessment Area continue, and trust natural resources continue to be exposed to elevated levels of hazardous substances.

The Trustees have completed a Preassessment Screen, which concluded that there is a reasonable likelihood that natural resources have been injured and that the Trustees should conduct an assessment to develop a damage claim under 42 U.S.C. 9607. The Trustees' goal for the assessment is to fully restore the ecological and human use services lost or diminished as a result of injuries caused by the release of hazardous substances from the facility. This phase of the assessment is the first step in this assessment process. It provides a description of the Assessment Area, confirms exposure of trust resources to hazardous substances, and describes the Trustees' approach to injury determination for surface water, groundwater, air, geological, and biological resources.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours. Individual respondents who prefer confidentiality and wish to have their name and/or address withheld from public review or from disclosure under the Freedom of Information Act, must state this prominently at the beginning of their written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

The authority for this action is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C 9601 *et seq.*), and published under the authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs in the Departmental Manual at 209 DM 8.

Dated: May 27, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 04–13672 Filed 6–16–04; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1320–EL; WYW154595]

Notice of Availability of a Final Environmental Assessment (EA) on a Coal Lease by Application (LBA) Received for a Federal Coal Tract in the Decertified Green River/Hams Fork Coal Production Region, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability (NOA).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and 43 Code of Federal Regulations (CFR) § 3425.4, the Bureau of Land Management (BLM) announces the availability of the Ten Mile Rim Coal Tract Final EA.

The Final EA analyzes and discloses direct, indirect, and cumulative environmental impacts of issuing a Federal coal lease on the eastern flank of the Rock Springs Uplift. These lands are located in Sweetwater County, Wyoming.

DATES: Written comments on the Final EA will be accepted for 30 days following the date this notice is published in the **Federal Register.**

ADDRESSES: Please address questions, comments, or concerns to the Rock Springs Field Office, Bureau of Land Management, Attn: Teri Deakins, 280 Highway 191 North, Rock Springs, Wyoming 82902; fax them to 307–352–0329; or send electronic comments to Teri Deakins at *teri_deakins@blm.gov.*

A copy of the Final EA has been sent to the affected Federal, State, and local government agencies; persons and entities identified as potentially being affected by a decision to lease the Federal coal in this tract; and to persons who indicated to the BLM that they wished to receive a copy of the Final EA. Copies of the Final EA are available for public inspection during business hours at the following office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.
- Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

An electronic copy of the Final EA may be viewed or downloaded at the following Web site: *http://www.wy.blm.gov/rsfo.*

FOR FURTHER INFORMATION CONTACT: Teri Deakins or Jeff Clawson at the above address, or telephone 307–352–0256.

SUPPLEMENTARY INFORMATION: On September 28, 2001, Bridger Coal Company applied for a coal lease for approximately 7,054.34 acres in one tract (approximately 110 million recoverable tons of coal) adjacent to the Bridger Coal Mine in Sweetwater County, Wyoming. The tract is referred to as the Ten Mile Rim Tract, and was assigned case number WYW154595. Based on exploratory drilling results, the Ten Mile Rim Tract was modified and decreased in acreage. The modification was filed on February 11, 2003, reducing the amount of acreage to 2,242.18 acres containing approximately 44 million tons of in-place coal reserves.

The following lands are contained in the modified lease application in Sweetwater County, Wyoming:

Sixth Principle Meridian, Wyoming

T. 21 N., R. 100 W.
  Section 6: Lots 8 through 14, S½NE¼, SE¼NW¼, E½SW¼, SE¼.
T. 22 N., R. 100 W.
  Section 30: Lots 5 through 8, E½W½, E½.
T. 22 N., R. 101 W.
  Section 26: Lots 1 through 16
  Section 34: Lots 1, 2, 6, 7, 8, 13, NE¼SE¼SW¼SE¼

Containing 2,242.18 acres, more or less.

According to the modified application, the coal would be mined and sold to the Jim Bridger electrical power generating plant located adjacent to the existing mine and would therefore extend the life of the existing mine. The mine adjacent to the tract described above has an approved mining and reclamation plan from the Wyoming Department of Environmental Quality (WYDEQ) Land Quality Division, and an approved air quality permit from its Air Quality Division.

A draft EA was released for review and comment in early February 2004. The public comment period ended March 4, 2004. On March 9, 2004, a public hearing was held at the Rock Springs Field Office, Rock Springs, Wyoming. In addition to soliciting for comments on the draft EA, the purpose of the hearing was to solicit comments from the public on (1) the proposal to issue a Federal coal lease; (2) the proposed competitive lease sale; (3) the fair market value of the Federal coal; and (4) maximum economic recovery of the Federal coal included in the Ten Mile Rim tract. Eight written comment letters were received and are included in the Final EA with BLM's responses.

The Final EA analyzes two alternatives: the Proposed Action of leasing the tract and the No Action Alternative of rejecting the application to lease Federal coal. Consistent with the coal leasing regulations, BLM identified and considered other alternative tract configurations that would (1) add or subtract Federal coal to avoid bypassing coal, or (2) increase the estimated fair market value of the unleased Federal coal in this area. These were eliminated from detailed study in the EA. A decision to adopt either the Proposed Action or No Action Alternative would conform to the 1997 Green River Resource Management Plan.

The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency in the preparation of the Final EA. If the tract is leased, it must be incorporated into the existing mining and reclamation plan for the adjacent Bridger coal mine. Before the Federal coal in this tract can be mined, the Secretary of the Interior must approve each revision to the MLA (Mineral Leasing Act) mining plan. OSM is the Department of the Interior agency that would be responsible for recommending approval, approval with conditions, or disapproval of the revised MLA plans to the Secretary of the Interior.

The BLM asks that those submitting comments make them as specific as possible with reference to page numbers and chapters of the Final EA. Comments that contain only opinions or preferences will not receive a formal response; however, they will be considered and included as part of the BLM decisionmaking process. Comments, including names and street addresses of respondents, will be available for public review at the address listed above during business hours (7:45 a.m. through 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. BLM will not accept anonymous comments. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, will be made available for public inspection in their entirety.

Authority: 43 CFR 3425.4.

Dated: April 19, 2004.

Robert A. Bennett,

State Director.

[FR Doc. 04–13670 Filed 6–16–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL; WYW151634]

Notice of Availability of West Hay Creek Lease by Application (LBA) Final Environmental Impact Statement (FEIS), Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability (NOA) of Final Environmental Impact Statement (FEIS) for the West Hay Creek LBA tract, for Federal coal in the decertified Powder River Federal Coal Production Region, Wyoming.

SUMMARY: Under the National Environmental Policy Act (NEPA) implementing regulations and other applicable statutes the Bureau of Land Management (BLM) announces the availability of the West Hay Creek LBA FEIS. The FEIS analyzes the impacts of issuing a Federal coal lease in the Wyoming portion of the Powder River Basin.

DATES: The FEIS will be available for review for 30 calendar days from the date the Environmental Protection Agency (EPA) publishes its NOA in the **Federal Register**. The BLM can best utilize your comments and resource information submissions within the 30 day review period provided above.

ADDRESSES: Please address questions, comments, or concerns to the Casper Field Office, Bureau of Land Management, Attn: Patricia Karbs, 2987 Prospector Drive, Casper, Wyoming 82604, fax them to 307–261–7587, or send e-mail comments to *casper_wymail@blm.gov.,* Attn: Patricia Karbs. Copies of the FEIS are available for public inspection at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.
- Bureau of Land Management, Casper Field Office, 2987 Prospector Lane, Casper, Wyoming 82604.

The FEIS is also available electronically on the Internet at *http://www.wy.blm.gov/cfo/minerals.htm#docs.*

FOR FURTHER INFORMATION CONTACT: Patricia Karbs or Nancy Doelger; BLM Casper Field Office, 2987 Prospector Lane, Casper, Wyoming 82604. Ms. Karbs and Ms. Doelger may also be contacted by telephone at 307–261–7600.

SUPPLEMENTARY INFORMATION: On August 31, 2000, Triton Coal Company (Triton), a subsidiary of Vulcan Intermediary, LLC, filed an application for a coal lease maintenance tract in an area adjacent to the company's Buckskin Mine including approximately 933 acres and containing approximately 135 million tons of Federal coal. This tract has been assigned case number WYW151634, and is known as the West Hay Creek tract. On November 5, 2001, BLM received a request from Triton to modify the West Hay Creek tract to include the following lands in Campbell County, Wyoming:

T. 52 N., R. 72 W., 6th P.M., Wyoming
Section 17: Lots 5 (S½ S½), 6 (S½S½), 7 (S½S½), 8 (S½S½), 9–14;
Section 18: Lots 13 (E½), 20 (E½);
Section 19: Lots 5 (E½), 12 (E½), 13 (E½), 20 (E½);
Section 20: Lots 2 (W½, W½E½), 3–6, 7 (W½,W½E½), 10 (W½, W½E½), 11–14.

Containing 838.0975 acres, more or less.

In May 2003, Arch Coal purchased Vulcan Coal Holdings, LLC including the Buckskin Mine operations. To maintain continuity with the original application, Notice of Intent (NOI) and Draft EIS, the applicant is referred to as Triton in this Notice as well as the FEIS.

The Buckskin Mine and West Hay Creek tract are located in Campbell County, Wyoming. The tract was applied for as an LBA tract under the provisions of 43 Code of Federal Regulations (CFR) 3425.1. Triton proposes to mine the modified West Hay Creek LBA tract as a maintenance tract for the Buckskin Mine and estimates that the tract includes an estimated 145 million tons of in-place Federal coal. At Buckskin's proposed mining rate of 25 million tons of coal per year this amount of recoverable coal would extend the life of the Buckskin Mine by approximately 6 years.

The Powder River Regional Coal Team (RCT) reviewed this competitive application at public meetings held on October 25, 2000, in Cheyenne, Wyoming, and May 30, 2002, in Casper, Wyoming. The RCT recommended that BLM continue to process this LBA. The BLM published an NOI in the **Federal Register** to prepare an Environmental Impact Statement (EIS) on June 25, 2002.

On March 21 and March 28, 2003, respectively, the BLM and the EPA each published an NOA in the **Federal Register** announcing that the Draft EIS was available for public review and comment. Pursuant to 43 CFR 3425.4, a formal public hearing on the West Hay Creek tract application was held on April 16, 2003, in Gillette, Wyoming. The purpose of the hearing was to solicit public comments on the Draft EIS and on: (1) The fair market value, (2) the maximum economic recovery, and (3) the proposed competitive sale of the coal included in the proposed tract. The 60-day review and comment period on the Draft EIS ended on May 27, 2003.

The FEIS analyzes leasing the West Hay Creek tract as applied for as the Proposed Action (Alternative 3). As part of the coal leasing process, to avoid bypassing coal or to increase potential competitive interest in the tract, the BLM will evaluate the tract configuration, and may decide to add or subtract Federal coal. The preferred tract configuration that BLM has identified for this tract is described and analyzed as Alternative 2 in the EIS. The EIS also analyzes the alternative of rejecting this application to lease this tract of Federal coal as the No Action Alternative.

The Final EIS for the West Hay Creek tract analyzes the effects of three alternatives:

- Alternative 1, the No Action Alternative;
- Alternative 2, the Preferred Alternative; and,
- Alternative 3, the Proposed Action.

The No Action alternative assumes that the coal lease application would be rejected and the West Hay Creek Federal coal tract would not be offered for competitive sale. Under the Preferred Alternative the size of the tract as applied for would be reconfigured and increased, and the larger tract would be offered for competitive sale. The Proposed Action alternative assumes that the size and configuration of the tract of coal as proposed and included in Triton's application would remain the same and would be offered for competitive sale.

The Agency-preferred Alternative: The BLM's preferred alternative is Alternative 2.

If implemented, the Proposed Action or any of its alternatives considered in the EIS would be in conformance with the ''Approved Resource Management Plan for Public Lands Administration by the Bureau of Land Management Buffalo Field Office'' (April 2001, amended 2003).

The Buckskin Mine adjacent to the lease application area has an approved mining and reclamation plan from the Wyoming Department of Environmental Quality (WYDEQ), Land Quality

Division. WYDEQ Air Quality Division has permitted the mine operator to mine up to 27.5 million tons of coal per year.

The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency in the preparation of this EIS. If the West Hay Creek LBA tract is leased to the applicant, the new lease must be incorporated into the existing mining plan for the adjacent Buckskin Mine. Before the Federal coal in the tract can be mined, the Secretary of the Interior must approve the revised Mineral Leasing Act (MLA) mining plan. If the tract is leased OSM is the Federal agency that would be responsible for recommending approval, approval with conditions, or disapproval of the MLA mining plan to the Secretary of the Interior.

Seven written comments were received on the Draft EIS, and one comment was recorded at the 2003 public hearing. The issues that were identified in the comment letters and at the hearing included potential conflicts with existing conventional oil and gas and coalbed methane development; potential cumulative impacts of increasing mineral development in the Powder River Basin; validity and currency of resource data; potential impacts to threatened and endangered species and other species of concern; potential cumulative air quality impacts; private versus Federal leasing.

The BLM will consider all comments received on the FEIS in its preparation of the Record of Decision (ROD) and BLM's response to those comments included with the ROD. To be given consideration by BLM, all FEIS comment submittals must include the commenter's name and street address.

Our practice is to make comments, including the names and street addresses of each respondent, available for public review at the BLM offices listed above during business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except for Federal holidays. Your comments may be published as part of the EIS process. Individual respondents may request confidentiality. If you wish to withhold your name, street address, or both, from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. We will not consider anonymous comments. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Dated: May 3, 2004.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 04–13669 Filed 6–16–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XM–241A]

Notice of Meeting, 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 July 7, 2004 from 10 a.m. to 5 p.m. and will continue on July 8, 2004 from 9 a.m. to 3 p.m.

ADDRESSES: High Country Bank, 7360 W. U.S. Hwy. 50, Salida, CO 81201.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (719) 269–8500.

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 Royal Gorge Field Office and San Luis Valley, Colorado. Planned agenda topics on July 7 include: Manager updates on current land management issues; Arkansas River water flow issues and a Travel Management Plan update. On July 8 the Council will tour the Browns Canyon segment of the Arkansas River to observe and discuss river management issues.

All meetings are open to the public. The public is encouraged to make oral comments to the Council at 10:15 a.m. on July 7, 2004 or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. The public is also welcome to attend the river tour on July 8, if space is available, however they will need to call the Royal Gorge Field Office at (719) 269–8500 before July 1 for details on how to make arrangements. Summary minutes for the Council Meeting will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting Minutes are also available at: *http://www.blm.gov/rac/co/frrac/co_fr.htm*

Dated: June 9, 2004.

Roy L. Masinton,

Royal Gorge Field Manager.

[FR Doc. 04–13709 Filed 6–16–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–1430–ET; ALES–052032]

Public Land Order No. 7605; Transfer of Administrative Jurisdiction, Talladega National Forest Boundary Modification; Alabama

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order confirms the transfer of administrative jurisdiction as to 559.48 acres of Federal lands from the Secretary of the Interior to the Secretary of Agriculture for expansion of the Talladega National Forest.

DATES: *Effective Date:* June 17, 2004.

FOR FURTHER INFORMATION CONTACT: Ed Ruda, BLM, Eastern States, 7450 Boston Blvd., Springfield, Virginia 22153, 703–440–1663.

SUPPLEMENTARY INFORMATION: Pub. L. 104–310 modifies the boundaries of the Talladega National Forest to include the lands described in this order.

Order

By virtue of the authority vested in the Secretary of the Interior by Public Law 104–310, 110 Stat. 3817, and Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered and confirmed as follows:

1. Subject to valid existing rights, administrative jurisdiction as to the following described Federal lands is transferred from the Secretary of the Interior to the Secretary of Agriculture for expansion of the Talladega National Forest:

Huntsville Principal Meridian

T. 13 S., R. 9 E.,
sec. 28, SE¼.
T. 17 S., R. 8 E.,
sec. 34, NE¼, SW¼, and S½NW¼.

The areas described aggregate 459.48 acres, more or less, in Calhoun and Cleburne Counties.

2. The lands described in Paragraph 1 are administered as part of the Talladega National Forest in accordance with the provisions in Pub. L. 104–310.

Dated: May 17, 2004.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–13666 Filed 6–16–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1430–ET; MIES–019212]

Public Land Order No. 7606; Revocation of Executive Order Dated December 18, 1849; Michigan

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety, an Executive Order which reserved 92.4 acres of public land for the Manitou Island Light Station. The reservation is no longer needed by the United States Coast Guard for lighthouse purposes.

DATES: *Effective Date:* June 17, 2004.

FOR FURTHER INFORMATION CONTACT: Ed Ruda, BLM Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, 703–440–1663.

SUPPLEMENTARY INFORMATION: This is a record-clearing action only. The land has been determined to be unsuitable for return to public domain status and has been reported as excess property to the General Services Administration for disposal pursuant to the National Historic Lighthouse Preservation Act of 2000.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

The Executive Order dated December 18, 1849, which reserved the following described public land for lighthouse purposes, is hereby revoked in its entirety:

Michigan Meridian

T. 58 N., R. 26 W.,
sec. 15 (fractional).

The area described contains 92.40 acres in Keweenaw County as shown by the May 8, 1846 survey plat.

Dated: May 17, 2004.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–13667 Filed 6–16–04; 8:45 am]

BILLING CODE 4310–GJ–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1047 (Final)]

Ironing Tables and Certain Parts Thereof From China; Notice of Commission Determination To Conduct a Portion of the Hearing In Camera

AGENCY: International Trade Commission.

ACTION: Closure of a portion of a Commission hearing.

SUMMARY: Upon request of respondents Harvest Housewares, Ltd., Whitney Designs, Inc. And Polder, Inc., (collectively ''Harvest'') the Commission has determined to conduct a portion of its hearing in the above-captioned investigation scheduled for June 16, 2004, *in camera.* See Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Rhonda Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3083. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–3105.

SUPPLEMENTARY INFORMATION: The Commission believes that Harvest has justified the need for a closed session. Harvest seeks a closed session to allow for a discussion of business proprietary pricing, financial, and production information. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by the petitioners and by respondents, with questions from the Commission. In addition, the hearing will include a 10-minute *in camera* session for a confidential presentation by Harvest and followed by a 10-minute *in camera* rebuttal presentation by petitioners. Questions from the Commission relating to the BPI will follow each of the *in camera* presentations. During the *in camera* session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. See 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The Acting General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in his opinion, a portion of the Commission's hearing in *Ironing Tables from China,* Inv. No. 731–TA–1047 (Final), may be closed to the public to prevent the disclosure of BPI.

Issued: June 10, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–13616 Filed 6–16–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1084–1087 (Preliminary)]

Purified Carboxymethylcellulose From Finland, Mexico, Netherlands, and Sweden

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–1084–1087 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Finland, Mexico, Netherlands, and Sweden of purified carboxymethylcellulose (CMC),[1]

[1] The merchandise under investigation is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium carboxymethylcellulose that has been refined and

provided for in subheading 3912.31.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in an antidumping investigation in 45 days, or in these cases by July 26, 2004. The Commission's views are due at Commerce within five business days thereafter, or by August 2, 2004.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* June 9, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on June 9, 2004, by Aqualon Company, a division of Hercules, Incorporated, Wilmington, DE.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 30, 2004, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Cynthia Trainor (202–205–3354) not later than June 28, 2004, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 6, 2004, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: June 10, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–13615 Filed 6–16–04; 8:45 am]

BILLING CODE 7020–02–P

purified to a minimum assay of 90 percent; and which excludes unpurified or crude CMC and which also excludes CMC Fluidized Polymer Suspensions and CMC that is cross-linked through heat treatment.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Atofina Chemicals, Inc., and General Metals of Tacoma, Inc.*, Civil Action No. C04–5319–RBL was lodged on June 2, 2004, with the United States District Court for the Western District of Washington. This consent decree requires the defendants to perform injunctive relief, requiring the cleanup of the Head of the Hylebos Waterway Problem Area of the Commencement Bay/Nearshore Tideflats Superfund Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Atofina Chemicals, Inc., and General Metals of Tacoma, Inc.*, DOJ Ref. 90–11–2–726/1.

The proposed consent decree may be examined at the office of the United States Attorney, 601 Union Street, Suite 5100, Seattle, WA 98101 and at U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. During the comment period, the consent decree may be examined on the following Department

of Justice web site, *http://www.usdoj.giv/enrd/open.html.* Copies of the consent decree also may 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, please enclose a check in the amount of $53.50 (with attachments) or $23.25 (without attachments) for *United States* v. *Atofina Chemicals, Inc., and General Metals of Tacoma, Inc.*, (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Maher,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 04–13693 Filed 6–16–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 10, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). 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 Occupational Safety and Health Administration (OSHA), 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: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Grantee Quarterly Progress Report.

OMB Number: 1218–0100.

Frequency: Quarterly.

Type of Response: Reporting and recordkeeping.

Affected Public: Not-for-profit institutions.

Number of Respondents: 67.

Number of Annual Responses: 268.

Estimated Time Per Response: 12 hours.

Total Burden Hours: 3,216.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Grantee Quarterly Progress Report (OSHA Form 171) is used to collect information concerning activities conducted by grantees under OSHA training grant programs. The information is used to monitor the use of Federal grant funds.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 04–13598 Filed 6–16–04; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,559]

Cequent Trailer Products, Formerly Hammerblow Corp., Wausau, Wisconsin; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Cequent Trailer Products, Formerly HammerBlow Corporation, Wausau, Wisconsin. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–54,559; Cequent Trailer Products Formerly HammerBlow Corporation, Wausau, Wisconsin (June 8, 2004)

Signed at Washington, DC, this 10th day of June, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–13596 Filed 6–16–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of May 2004.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially

separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A) (I.C.) (increased imports) and (a)(2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–54,745; Chart Industries, Inc., Chart Storage Systems Div., Plaistow, NH

TA–W–54,103; Kulicke & Soffa Industries, Inc., Willow Grove Division, Willow Grove, PA

TA–W–54,747; Kyocera America, Inc., Beaverton, OR

TA–W–54,723; Somerset Consolidated Industries, Inc., New Castle Foundry Co., New Castle, PA

TA–W–54,470; Biolab, Inc., West Lake, LA

TA–W–54,427; Huntington Steel Corp., Warren, MI

TA–W–54,725; Pristech Products, Inc., formerly Prism Enterprises Services, including leased workers of Link Staffing Services, San Antonio, TX

TA–W–54,782; B.J. Cutting, a subsidiary of Lawrence Stevens Fashions, Ltd, Hazleton, PA

TA–W–54,414; Affiliated Computer Services, Inc., Employed at Cummins, Inc., Columbus, IN

TA–W–54,746; Eureka Security Printing, Jessup, PA

TA–W–54,680; Grand Valley Manufacturing, Titusville, PA

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–54,732; M C I, Niles Call Center, Niles, OH

TA–W–54,708; Novellus Systems, Inc., Software Quality Assurance Group, San Jose, CA

TA–W–54,695; C–Cor Corp., Repair Services Department, Meriden, CT

TA–W–54,875; Thomson, In., American Tube Operations, Dunmore, PA

TA–W–54,612; CCC Information Services, Inc., a subsidiary of CCC Information Services Group, Inc., Chicago, IL

TA–W–54,929; Toko American, Inc., a subsidiary of Toko, Inc., Huntsville, AL

TA–W–54,434; Gale Group, a div. of The Thomson Corp., Belmont, CA

TA–W–54,764; GE Commercial Distribution Finance (CDF). A div. of GE Commercial Finance, St. Louis, MO

TA–W–54,923; Teleplan, Austin, TX

TA–W–54,327; Lucent Technologies, Inc., Lucent Worldwide Services (LWS), Downers Grove—Engineering, Downers Grove, IL

TA–W–54,631; IBM Corp., Personal Systems Group, Integrated Supply Chain Div., Research Triangle Park, NC

TA–W–54,476; Tekmatex, Inc., a wholly owned subsidiary of Marubeni America Corp., Charlotte, NC

TA–W–54,307; Solectron, Cypress, CA

TA–W–54,773; Inovis, Inc., Northfield, MI

TA–W–54,798; B & B Packing Workshop, Strong, ME

TA–W–54,949; Wakeman Oil Co., Inc., Wakeman, OH

TA–W–54,267; Lucent Technologies, Inc., Engineering Department, Alpharetta, GA

The investigation revealed that criterion (a)(2)(A)(I.A) (no employment decline) has not been met.

TA–W–54,544; Don Evans, Inc., d/b/a Evco Plastics, Tool Room Division, Reno NV

TA–W–54,709; Summitville Tiles, Inc., Minerva, OH

The investigation revealed that criterion (a)(2)(A) (I.A) (no employment decline) has not been met and (a) (2)(B) (II.B) (has shifted production to a county not under the free trade agreement with U.S.) have not been met.

TA–W–54,679; Magnum Plastics, Inc., Erie, CO

The investigation revealed that criteria (a)(2)(A) (I.B) (Sales or production, or both, did not decline) and (a) (2)(B)(II.B) (has shifted production to a county not under the free trade agreement with U.S.) have not been met.

TA–W–54,856; Capitol Records, Inc., Subsidiary of EMI Group, PLC, EMI Customer Fulfillment Operations, including leased workers of Adecco, Jacksonville, IL

The investigation revealed that criteria (a)(2)(A)(I.C) (increased imports) and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

TA–W–54,720; Texon, USA, Russell, MA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–54,712; Gemeinhardt Co., Elkhart, IN: April 12, 2003.

TA–W–54,907; Ponsleep Products, Inc., Compton, CA: May 6, 2003.

TA–W–54,424; FSI International, Inc., including leased workers at Spherion, Aerotek and Prostaff, Chaska, MN: March 3, 2003.

TA–W–54,772; Metzeler Automotive Profile Systems, Iowa Div., Keokuk, IA: April 19, 2003.

TA–W–54,663; New Castle Battery Manufacturing Co., New Castle, PA: April 2, 2003.

TA–W–54,647; Ormet Primary Aluminum Corp., a subsidiary of Ormet Corp., Hanibal Reduction Div., Hannibal, OH: March 31, 2003.

TA–W–54,882; Interface Fabrics Elkin, Inc., d/b/a/ Intek, a subsidiary of Interface, Inc., Aberdeen, NC: May 5, 2003.

TA–W–54,664; Luisa's Sportswear, a div. of Slarama, Inc., New Bedford, MA: April 1, 2003.

TA–W–54,784; Security Forces, Inc., Employed at Georgetown Steel Co., LLC, Georgetown, SC: April 26, 2003.

TA–W–54,883; Westpoint Stevens, Inc., Drakes Branch, VA: April 28, 2003.

TA–W–54,753; American Furniture Co., Inc., a division of La-Z-Boy, Inc., including leased workers of Ameristaff and Randstad, Martinsville, VA: April 19, 2003.

TA–W–54,736; Tee Jays Manufacturing Co., Plant 5, Florence, AL: April 15, 2003.

TA–W–54,775; Avondale Mills, Inc., Walton Plant, Monroe, GA: April 23, 2003.

TA–W–54,902; Solutia, Inc., Sauget, IL: May 11, 2003.

TA–W–54,812; Vesuvius USA, Altoona, PA: April 28, 2003.

TA–W–54,445; Scholle Corp., Scholle Custom Packaging, Manistee, MI: March 5, 2003.

TA–W–54,508; Hoover-Hanes Rubber Custom Mixing, a div. of RBX Industries, Tallapoosa, GA: March 3, 2003.

TA–W–54,514; Video Products Group, Inc., Camarillo, CA: March 4, 2003.

TA–W–54,729; Piedmont Industries, Inc., Hickory Plant, Hickory, NC: April 8, 2003.

TA–W–54,894; Royce Hosiery, LLC, Martinsburg, WV: May 11, 2003.

TA–W–54,586; Brothers Manufacturing, Inc., Hermansville, MI: March 22, 2003.

TA–W–54,722; Stefanie Fashions, Jersey City, NJ: April 14, 2003.

TA–W–54,819; RHE Hatco, Inc., Stetson Harts Div., a subsidiary of Arena Brands, Inc., St. Joseph, MO: April 26, 2003.

TA–W–54,749; Fellowes, Inc., Wire Office and Desk Accessories Div., Belcamp, MD: March 25, 2003.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–54,918; Invensys Appliance Controls, North Manchester, IN: May 14, 2003.

TA–W–54,912; DeRoyal Ind., Inc., Patient Care Div., Dryden, VA: April 26, 2003.

TA–W–54,852; Pennaco Hosiery, a subsidiary of Danskin, Inc., Grenada, MS: April 23, 2003.

TA–W–54,845; Carhartt, Inc., Madisonville Cutting Facility, Madisonville, KY: May 4, 2003.

TA–W–54,716; Kellogg Crankshaft, Jackson, MI: April 6, 2003.

TA–W–54,754; M. Stephens Manufacturing Co., Cudahy, CA: April 14, 2003.

TA–W–54,823; Ehlert Tool Co., Inc., New Berlin, WI: April 30, 2003.

TA–W–54,822; Honeywell International, Consumer Products Group, including leased workers of Manpower, Clearfield, UT: April 9, 2003.

TA–W–54,489; Plastic Research and Development, a subsidiary of EBSCO Industries, Inc., Fort Smith, AR: March 11, 2003.

TA–W–54,659; Sara Lee Branded Apparel, Sportswear Div., Martinsville, VA: March 22, 2003.

TA–W–54,701; Viratec Thin Films, I–5 LISEC Div., Faribault, MN: April 7, 2003.

TA–W–54,848; OshKosh B'Gosh, Inc., Research and Development Department, OshKosh, WI: May 4, 2003.

TA–W–54,826; First Technology, Inc., Control Devices, Caribou, ME: April 7, 2003.

TA–W–54,813; W L Jacquard LLC, Jacquard Div., Cliffside, NC: April 29, 2003.

TA–W–54,571; New Era Die Co., Red Lion, PA: March 16, 2003.

TA–W–54,790; Bourns Microelectronics, Inc., a subsidiary of Bourns, Inc., New Berlin, WI: April 26, 2003.

TA–W–54,737; General Electric Electromaterials, Coshocton, OH: March 31, 2003.

TA–W–54,728; Weiser Lock, a div. of Black and Decker Corp., Tucson, AZ: February 9, 2003.

TA–W–54,726; Sanford Corp., a subsidiary of Newell Rubbermaid, Business-to-Business Div., Pen Assembly Line, Janesville, WI: April 14, 2003.

TA–W–54,928; CNH America, LLC, a subsidiary of CNH Global, NV, including leased workers from Kelly Services, Racine, WI: May 17, 2003.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–54,893; Northest Composites, Inc., Marysville, WA: May 4, 2003.

TA–W–54,576; Rogers Corp., Elastomer Components Div., South Windham, CT: January 22, 2003.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of section 246(a)3)ii) have not been met for the reasons specified.

The Department as determined that criterion (1) of section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–54,664; Luisa's Sportswear, a div. of Slarama, Inc., New Bedford, MA

TA–W–54,784; Security Forces, Inc., Employed at Georgetown Steel Co., LLC, Georgetown, SC

The Department as determined that criterion (3) of section 246 has not been met. The competitive conditions within the workers' industry is adverse.

TA–W–54,928; CNH America, LLC., a subsidiary of CNH Global, NV, including leased workers from Kelly Services, Racine, WI

The Department as determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–54,907; Ponsleep Products, Inc., Compton, CA

TA–W–54,424; FSI International, Inc., including leased workers at Spherion, Aerotek and Prostaff, Chaska, MN

TA–W–54,772; Metzeler Automotive Profile Systems, Iowa Div., Keokuk, IA

TA–W–54,663; New Castle Battery Manufacturing Co., New Castle, PA

TA–W–54,647; Ormet Primary Aluminum Corp., a subsidiary of Ormet Corp., Hanibal Reduction Div., Hannibal, OH

TA–W–54,882; Interface Fabrics Elkin, Inc., d/b/a Intek, a subsidiary of Interface, Inc., Aberdeen, NC

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–54,631; IBM Corp., Personal Systems Group, Integrated Supply Chain Div., Research Triangle Park, NC

TA–W–54,476; Tekmatex, Inc., a wholly owned subsidiary of Marubeni America Corp., Charlotte, NC
TA–W–54,307; Solectron, Cypress, CA
TA–W–54,773; Inovis, Inc., Northfield, MI
TA–W–54,798; B & B Packing Workshop, Strong, ME
TA–W–54,949; Wakeman Oil Co., Inc., Wakeman, OH
TA–W–54,267; Lucent Technologies, Inc., Engineering Department, Alpharetta, GA
TA–W–54,856; Capitol Records, Inc., Subsidiary of EMI Group PLC, EMI Customer Fulfillment Operations, Including leased workers of Adecco, Jacksonville, IL
TA–W–54,720; Texon USA, Russell, MA
TA–W–54,747; Kyocera America, Inc., Beaverton, OR
TA–W–54,723; Somerset Consolidated Industries, Inc., New Castle Foundry Co., New Castle, PA
TA–W–54,470; Biolab, Inc., West Lake, LA
TA–W–54,427; Huntington Steel Corp., Warren, MI
TA–W–54,725; Pristech Products, Inc., formerly Prism Enterprises Services, including leased workers of Link Staffing Services, San Antonio, TX
TA–W–54,782; B.J. Cutting, a subsidiary of Lawrence Stevens Fashions, Ltd, Hazleton, PA
TA–W–54,414; Affiliated Computer Services, Inc., Employed at Cummins, Inc., Columbus, IN
TA–W–54,746; Eureka Security Printing, Jessup, PA
TA–W–54,709; Summitville Tiles, Inc., Minerva, OH
TA–W–54,680; Grand Valley Manufacturing, Titusville, PA

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–54,749; Fellowes, Inc., WireOffice and Desk Accessories Div., Belcamp, MD: March 25, 2003.
TA–W–54,819; RHE Hatco, Inc., Stetson Hats Div., a subsidiary of Arena Brands, Inc., including leased workers from The Staffing Center, Inc., St. Joseph, MO: April 26, 2003.
TA–W–54,722; Stefanie Fashions, Jersey City, NJ: April 14, 2003.
TA–W–54,586; Brothers Manufacturing, Inc., Hermansville, MI: March 22, 2003.
TA–W–54,894; Royce Hosiery, LLC, Martinsburg, WV: May 11, 2003.
TA–W–54,729; Piedmont Industries, Inc., Hickory Plant, Hickory, NC: April 8, 2003.
TA–W–54,514; Video Products Group, Inc., Camarillo, CA: March 4, 2003.
TA–W–54,508; Hoover-Hanes Rubber Custom Mixing, a div. of RBX Industries, Tallapoosa, GA: March 3, 2003.
TA–W–54,902; Solutia, Inc., Sauget, IL: May 11, 2003.
TA–W–54,812; Vesuvius USA, Altoona, PA: April 28, 2003.
TA–W–54,445; Scholle Corp., Scholle Custom Packaging, Manistee, MI: March 5, 2003.
TA–W–54,775; Avondale Mills, Inc., Walton Plant, Monroe, GA: April 23, 2003.
TA–W–54,736; Tee Jay's Manufacturing Co., Plant 5, Florence, AL: April 15, 2003.
TA–W–54,726; Sanford Corp., a subsidiary of Newell Rubbermaid, Business-To-Business Division, Pen Assembly Line, Janesville, WI: April 14, 2003.
TA–W–54,728; Weiser Lock, a div. of Black and Decker Corp., Tucson, AZ: February 9, 2003.PL Subsidiary, Inc., Winder, GA: March 29, 2003.
TA–W–54,737; General Electric Electromaterials, Coshocton, OH: March 31, 2003.
TA–W–54,571; New Era Die Co., Red Lion, PA: March 16, 2003.
TA–W–54,813; W L Jacquard, LLC, Jacquard Div., Cliffside, NC: April 29, 2003.
TA–W–54,826; First Technology, Inc., Control Devices, Caribou, ME: April 7, 2003.
TA–W–54,848; OshKosh B'Gosh, Inc., Research and Development Department, OshKosh, WI: May 4, 2003.
TA–W–54,716; Kellogg Crankshaft, Jackson, MI: April 6, 2003.
TA–W–54,701; Viratec Thin Films, I–5 Lisec Div., Faribault, MN: April 7, 2003.
TA–W–54,659; Sara Lee Branded Apparel, Sportswear Div., Martinsville, VA: March 22, 2003.
TA–W–54,489; Plastic Research and Development, a subsidiary of SBSCO Industries, Inc., Fort Smith, AR: March 11, 2003.
TA–W–54,822; Honeywell International, Consumer Products Group, including leased workers of Manpower, Clearfield, UT: April 9, 2003.
TA–W–54,823; Ehlert Tool Company, Inc., New Berlin, WI: April 30, 2003.
TA–W–54,754; M. Stephens Manufacturing Co., Cudahy, CA: April 14, 2003.
TA–W–54,845; Carhartt, Inc., Madisonville Cutting Facility, Madisonville, KY: May 4, 2003.
TA–W–54,852; Pennaco Hosiery, a subsidiary of Danskin, Inc., Grenada, MS: April 23, 2003.
TA–W–54,912; DeRoyal Ind., Inc., Patient Care Div., Dryden, VA: April 26, 2003.
TA–W–54,576; Rogers Corp., Elastomer Components Div., South Windham, CT: January 22, 2003.

I hereby certify that the aforementioned determinations were issued during the months of May 2004. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 9, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–13597 Filed 6–16–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 28, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 28, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 9th day of June, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 05/17/2004 and 05/28/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,914	Medtronic Vascular (Comp)	Danvers, MA	05/17/2004	05/06/2004
54,915	Valenite, LLC (Wkrs)	Gainesville, TX	05/17/2004	05/17/2004
54,916	Accurate Mold and Plastics Corp. (MO)	Nixa, MO	05/17/2004	05/11/2004
54,917	Circuit-Wise (Comp)	North Haven, CT	05/17/2004	05/14/2004
54,918	Invensys Appliance Controls (Wkrs)	N. Manchester, IN	05/17/2004	05/14/2004
54,919	Daimler Chrysler (Wkrs)	Detroit, MI	05/17/2004	05/14/2004
54,920	Dekko Technologies (Wkrs)	Claypool, IN	05/18/2004	05/17/2004
54,921	Burlington Industries (Comp)	Hurt, VA	05/18/2004	04/24/2004
54,922	E–Z–GO (Comp)	Augusta, GA	05/18/2004	05/17/2004
54,923	Teleplan (Wkrs)	Austin, TX	05/18/2004	05/12/2004
54,924	Northlands Orthopaedic (Comp)	Clifton, NJ	05/18/2004	05/07/2004
54,925	EGS Electrical Group (Comp)	Shoemakersville, PA	05/18/2004	05/10/2003
54,926	Bes-Tex Fabrics (Comp)	New York City, NY	05/18/2004	05/17/2004
54,927	Hayes Lammerz International (UAW)	Howell, MI	05/18/2004	05/17/2004
54,928	CNH America LLC (UAW)	Racine, WI	05/18/2004	05/17/2004
54,929	Toko America, Inc. (NPS)	Huntsville, AL	05/18/2004	05/17/2004
54,930	Yukon Manufacturing (Wkrs)	Litchfield, MI	05/18/2004	05/11/2004
54,931	Dana Corporation (Wkrs)	Andrews, IN	05/18/2004	05/12/2004
54,932	United Plastics Group (IL)	Bensenville, IL	05/19/2004	05/13/2004
54,933	Menasha Forest Products Corp. (State)	North Bend, OR	05/19/2004	05/12/2004
54,934	Rosenburg Forest Products (State)	Coquille, OR	05/19/2004	05/12/2004
54,935	Bush Industries (Wkrs)	Erie, PA	05/19/2004	05/14/2004
54,936	Deuer Manufacturing (Comp)	Dayton, OH	05/19/2004	05/10/2004
54,937	Quebecor (Wkrs)	Depew, NY	05/19/2004	05/11/2004
54,938	Sunrise Medical (Comp)	Stevens Point, WI	05/19/2004	05/18/2004
54,939	TI Group Automotive Systems, LLC (Comp).	Greeneville, TN	05/20/2004	05/19/2004
54,940	J.R. Simplot Co. (Comp)	Hermiston, OR	05/20/2004	04/27/2004
54,941	Vitro America d/b/a ACI Distribution (Wkrs).	Tualatin, OR	05/20/2004	05/18/2004
54,942	Hawk Motors (Comp)	Alton, IL	05/20/2004	05/11/2004
54,943	Swainsboro Electro Plating (Wkrs)	Swainsboro, GA	05/20/2004	05/12/2004
54,944	Norwood Promotional Products (Comp)	New London, WI	05/20/2004	05/18/2004
54,945	Amcor Plastube (Comp)	Breinigsville, PA	05/20/2004	05/17/2004
54,946	Teleplan Norcross (Comp)	Norcross, GA	05/20/2004	05/18/2004
54,947	Hewlett Packard (Wkrs)	Colorado Spgs., CO	05/20/2004	05/14/2004
54,948	RHV Ind. dba Shape Global Technology (Comp).	Sanford, ME	05/20/2004	05/17/2004
54,949	Wakeman Oil Company (NPC)	Wakeman, OH	05/20/2004	05/18/2004
54,950	Continental Retail Service, LLC (Comp)	Bellbrook, OH	05/20/2004	05/05/2004
54,951	Lampcrafters, Inc. (Comp)	Lexington, NC	05/20/2004	05/19/2004
54,952	VF Intimates, LP (UNITE)	Johnstown, PA	05/20/2004	05/18/2004
54,953	Ruhrpumpen, Inc. (Comp)	Tulsa, OK	05/20/2004	05/14/2004
54,954	Ciprico (MN)	Plymouth, MN	05/21/2004	05/20/2004
54,955	Phoenix Lace Cutting (NJ)	North Bergen, NJ	05/21/2004	05/21/2004
54,956A	Monarch Hosiery Mills (Comp)	Burlington, NC	05/21/2004	05/20/2004
54,956B	Monarch Hosiery Mills (Comp)	Burlington, NC	05/21/2004	05/20/2004
54,956C	Monarch Hosiery Mills (Comp)	Burlington, NC	05/21/2004	05/20/2004
54,956	Monarch Hosiery Mills (Comp)	Altamahaw, NC	05/21/2004	05/20/2004
54,957	Union Carbide Corp. (Wkrs)	S. Charleston, WV	05/21/2004	05/20/2004
54,958	U.S. Electrical Motors (Comp)	Philadelphia, MS	05/21/2004	05/21/2004
54,959	AT and T (Wkrs)	Piscataway, NJ	05/21/2004	05/14/2004
54,960	MGS Holding Corp. (Comp)	Woonsocket, RI	05/21/2004	05/20/2004
54,961	TDS Automotive (UAW)	Oxford, MI	05/21/2004	05/19/2004
54,962	Trilux Technologies, Inc. (Comp)	Winston-Salem, NC	05/24/2004	05/24/2004

APPENDIX—Continued

[Petitions instituted between 05/17/2004 and 05/28/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,963	Snow River Products (Wkrs)	Crandon, WI	05/24/2004	05/24/2004
54,964	Pope Corporation (Wkrs)	Taylor, MI	05/24/2004	05/21/2004
54,965	Flextronics International (NH)	Portsmouth, NH	05/24/2004	05/21/2004
54,966	Campbell Colors, Inc. (SC)	Greenville, SC	05/24/2004	05/17/2004
54,967	American Greetings Corp. (Comp)	Bardstown, KY	05/24/2004	05/24/2004
54,968	Johnson Controls (Wkrs)	Milwaukee, WI	05/24/2004	05/19/2004
54,969	Brown and Williamson Tobacco Corp. (Comp).	Chester, VA	05/24/2004	05/20/2004
54,970	Lifescan (Comp)	Milpitas, CA	05/24/2004	05/20/2004
54,971	Honeywell International, Inc. (Comp)	Acton, MA	05/24/2004	05/21/2004
54,972	CBCA (Wkrs)	Fort Worth, TX	05/25/2004	05/05/2004
54,973	Hubbell Electrical Products (MO)	Louisiana, MO	05/25/2004	05/03/2004
54,974	Tarkett, Inc. (Wkrs)	Whitehall, PA	05/25/2004	05/19/2004
54,975	Bake-Line Group (Wkrs)	Marietta, OK	05/25/2004	05/14/2004
54,976	Unisys Corporation (Wkrs)	Malvern, PA	05/25/2004	05/17/2004
54,977	Custom Tool and Manufacturing Co. (Wkrs).	Lawrenceburg, KY	05/25/2004	05/24/2004
54,978	WestPoint Stevens (Comp)	Valley, AL	05/25/2004	05/24/2004
54,979	American Express (Wkrs)	Phoenix, AZ	05/26/2004	05/15/2004
54,980	Eljer Plumbingware (Comp)	Salem, OH	05/26/2004	05/25/2004
54,981	Elkhart Foundry and Machine Co., Inc. (Comp).	Elkhart, IN	05/26/2004	05/25/2004
54,982	Hampton Lumber Mills, Inc. (Wkrs)	Grand Ronde, OR	05/26/2004	05/20/2004
54,983	PLM Garment Cutting Service (TX)	Desoto, TX	05/26/2004	05/20/2004
54,984	C and D Technologies, Inc. (Comp)	Leola, PA	05/26/2004	05/25/2004
54,985	Tyco Safety Products (MA)	Westminster, MA	05/26/2004	05/13/2004
54,986	Matsushita Electronic Components Corp. (Comp).	Knoxville, TN	05/26/2004	05/25/2004
54,987	Remington Products (CT)	Bridgeport, CT	05/27/2004	05/26/2004
54,988	Doveport Systems LLC (Comp)	Port Huron, MI	05/27/2004	05/25/2004
54,989	Paradise Datacom LLC (Comp)	Boalsburg, PA	05/27/2004	05/27/2004
54,990	Manpower International (Comp)	Asheville, NC	05/27/2004	05/21/2004
54,991	Marley Cooling Technologies (IAM)	Olathe, KS	05/27/2004	05/26/2004
54,992	Nerve Wire, Inc. (MA)	Newton, MA	05/27/2004	05/26/2004
54,993	Trinity Biotech Distribution (Wkrs)	Allentown, PA	05/27/2004	05/26/2004
54,994	Narroflex (Wkrs)	Stuart, VA	05/27/2004	05/11/2004
54,995	Herff Jones (NCFO)	Indianapolis, IN	05/28/2004	05/13/2004
54,996	Minnesota Mold and Engineering (MN)	Vadnais Hgts., MN	05/28/2004	05/27/2004
54,997	G and K Services (Comp)	Laurel, MS	05/28/2004	05/21/2004
54,998	GretagMacbeth LLC (Comp)	New Windsor, NY	05/28/2004	05/27/2004
54,999	Markey (IAM)	Seattle, WA	05/28/2004	05/27/2004

[FR Doc. 04–13595 Filed 6–10–04; 8:45 am]

BILLING CODE 4510–30–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

June 9, 2004.

TIME AND DATE: 1 p.m., Tuesday, June 29, 2004.

PLACE: Department of Labor Auditorium, U.S. Department of Labor, Francis Perkins Building, 200 Constitution Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

The Commission will hear oral argument on an appeal of Twentymile Coal Company from the decision of an administrative law judge in *Secretary of Labor* v. *Twentymile Coal Company,* Docket No. WEST 2002–194. (Issues include whether the judge correctly determined that the Secretary of Labor properly cited Twentymile Coal Company for violations of mandatory safety standards committed by its independent contractor.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

FOR FURTHER INFORMATION CONTACT: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 04–13787 Filed 6–15–04; 8:45 am]

BILLING CODE 6735–01–M

NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

Public Hearing

ACTION: Notice of public hearing.

SUMMARY: The National Commission on Terrorist Attacks Upon the United States will hold its twelfth and final public hearing on June 16–17, 2004, in Washington, DC. The two-day hearing will focus on two district topics: the ''9–11 Plot'' and ''National Crisis Management.'' The hearing will be open to the public and members of the media. Seating will be provided on a first-come, first-served basis, and doors will open at 7 a.m. Members of the media must register by the close of business on June 14, 2004, by visiting the Commission's Web site, *www.9–11commission.gov.*

DATES: June 16, 2004: 8:30 a.m. to 3:15 p.m. and June 17, 2004: 8 a.m. to 1 p.m.

Location: National Transportation Safety Board Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

FOR FURTHER INFORMATION CONTACT: Al Felzenberg or Jonathan Stull at (202) 401–1627, (202) 494–3538 (cellular), or *jstull@9–11commission.gov.*

SUPPLEMENTARY INFORMATION: Please refer to Public Law 107–306 (November 27, 2002), title VI (Legislation creating the Commission), and the Commission's Web site: *www.9–11commission.gov.*

Dated: June 14, 2004.

Philip Zelikow,

Executive Director.

[FR Doc. 04–13733 Filed 6–15–04; 10:55 am]

BILLING CODE 8800–01–M

NATIONAL MEDIATION BOARD

Submission for OMB Review; Comment Request

AGENCY: National Mediation Board (NMB).

ACTION: Notice.

SUMMARY: The Chief Information Officer, Finance and Administration Department, invites comments on the submission for OMB review, in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995 and 5 CFR 1320). This notice announces that the NMB has submitted to the Office of Management and Budget a request for clearance of one (1) information collection.

DATES: Interested persons are invited to submit comments within 30 days from the date of this publication.

ADDRESSES: Written comments should be addressed to June D. W. King, Chief Information Officer, Finance and Administration, National Mediation Board, 1301 K Street, NW., Suite 250 East, Washington, DC, 20572 or should be e-mailed to *king@nmb.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Chief Information Officer, Finance and Administration Department, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection contains the following: (1) Type of review requested, *e.g.*, new, revision extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Record keeping burden. OMB invites public comment.

Dated: June 10, 2004.

June D. W. King,

Chief Information Officer, Finance and Administration Department, National Mediation Board.

Application for Alternative Dispute Resolution (ADR) Services

Frequency: On occasion.

Affected Public: Airline Carriers, Railroads, and Union Officials.

Reporting and Recordkeeping Hour Burden:

Responses: Estimate about 45 annually.

Burden Hours: 9.

Abstract: The Railway Labor Act, 45 U. S. C., 151 a. General Purposes, provides that the purposes of the Act are (1) to avoid any interruption to commerce or to the operation of any carrier engaged therein* * *. (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions, and (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions.

In fulfilling its role to administer the Act, the National Mediation Board offers the parties to disputes mediation and arbitration services. On a voluntary basis, training programs in Alternative Dispute Resolution (ADR) and facilitation services are also available. These ADR programs are designed to enhance the bargaining and grievance handling skill level of the disputants and to assist the parties in the resolution of disputes. The impact of these ADR programs is that mediation and arbitration can be avoided entirely or the scope and number of issues brought to mediation or arbitration is significantly reduced.

This collection is necessary to confirm the voluntary participation of the parties in the ADR process. The information provided by the parties is used by the NMB to schedule the parties for ADR training and facilitation. Based on a recent survey of those who participated in the NMB's ADR Programs, 94.6% said they were satisfied with the ADR Programs and said they recommend the program for all negotiators. Collecting the brief information on the Application for ADR Services form allows the parties to voluntarily engage the services of the NMB in the orderly settlement of all disputes and fulfill the purposes of the Act.

Requests for copies of the proposed information collection request should be addressed to Grace Ann Leach, NMB, 1301 K Street, NW., Suite 250 E, Washington, DC 20572 or addressed to the e-mail address *leach@nmb.gov* or faxed to 202–692–5081. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to June D. W. King at 202–692–5010 or via Internet address *king@nmb.gov.* Individuals who use a telecommunications device for the deaf (TDD/TDY) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–13606 Filed 6–16–04; 8:45 am]

BILLING CODE 7550–01–P

NUCLEAR REGULATORY COMMISSION

Elimination of the Site Decommissioning Management Plan and Management of All Sites Undergoing Decommissioning Under a Comprehensive Decommissioning Program; Information Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Information notice.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has decided to eliminate the Site Decommissioning Management Plan (SDMP) designation for sites and manage the SDMP sites as ''complex sites,'' under a comprehensive decommissioning program. Elimination of the SDMP designation and the discontinuance of the SDMP as a separate site listing is appropriate, because the original intent of the SDMP and SDMP Action Plan (*i.e.*, to achieve closure on cleanup issues so that cleanup could proceed in a timely manner) has been achieved. The SDMP sites have been incorporated into a comprehensive decommissioning program that facilitates the cleanup of

routine and complex sites in a manner that is consistent with the goals of the SDMP and SDMP Action Plan.

Viewed in the context of this comprehensive decommissioning program, which includes routine decommissioning sites, formerly licensed sites, SDMP sites, non-routine/complex sites, fuel cycle sites, and test/research and power reactors, the continued use of the SDMP does not provide the same benefits that it did when it was first developed. The staff believes the cleanup of these sites is managed more effectively as part of this larger program. As the SDMP sites will be managed as complex sites under this comprehensive program, the level of safety currently in place at SDMP sites will not be diminished. In addition, as sites are identified and managed as complex sites, and as more sites are evaluated pursuant to the comprehensive decommissioning program, common problematic technical issues should be identified more easily, and resolutions to these issues should be implemented in a more consistent manner.

FOR FURTHER INFORMATION, CONTACT: Daniel M. Gillen, Mail Stop: T–7F27, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–7295; Internet: *dmg2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The SDMP was developed by the staff, in response to the Commission's direction to develop a comprehensive strategy for NRC to deal with a number of contaminated sites, so that closure on cleanup issues could be attained in a timely manner. In 1992, the staff developed the SDMP Action Plan to: (1) Identify criteria that would be used to guide the cleanup of sites; (2) state the NRC's position on finality; (3) describe the NRC's expectation that cleanup would be completed within 3–4 years; (4) identify guidance on site characterization; and (5) describe the process for timely cleanup on a site-specific basis.

Discussion

Since development of the SDMP Action Plan, the staff has addressed the issues identified in the Action Plan, as follows. The criteria for site cleanup and NRC's position on finality were codified in 10 CFR part 20, subpart E [License Termination Rule (LTR)]. NRC's expectations regarding the completion of site decommissioning have been codified in 10 CFR 30.36, 40.42, 70.38, and 72.54. Issues associated with site characterization have been addressed in the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) (NUREG–1575, Rev. 1, August 2000) and in Volume 2: Characterization, Survey, and Determination of Radiological Criteria, of the Consolidated NMSS Decommissioning Guidance (NUREG–1757, Vol. 2, September 2003). The process for timely cleanup on a site-specific basis is addressed in NUREG–1757, Consolidated NMSS Decommissioning Guidance.

In addition, the NRC staff tracks significant decommissioning issues in its operating plan, and resolution of an issue is integrated with the work being done at the site and with other activities in the decommissioning program. The staff has also developed a standard review plan (NUREG–1727, NMSS Decommissioning Standard Review Plan, September 2000) and has completed its efforts to consolidate, risk-inform, and performance-base the policies and guidance for its decommissioning program, with the issuance of a three-volume NUREG report (NUREG–1757, Consolidated NMSS Decommissioning Guidance). This guidance addresses compliance with the radiological criteria for license termination of the LTR, and it incorporates the risk-informed and performance-based alternatives of the rule. The guidance provides NRC staff with the evaluation and acceptance criteria for use in reviewing decommissioning plans, allowing NRC staff to determine if the decommissioning could be conducted such that the public health and safety are protected and the facility could be released in accordance with NRC's requirements.

Dated at Rockville, MD, this 7th day of June, 2004.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Deputy Director for the Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–13665 Filed 6–16–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 301 and Forms ATS and ATS–R; SEC File No. 270–451; OMB Control No. 3235–0509.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation ATS provides a regulatory structure that directly addresses issues related to alternative trading systems' role in the marketplace. Regulation ATS allows alternative trading systems to choose between two regulatory structures. Alternative trading systems have the choice between registering as broker-dealers and complying with Regulation ATS or registering as national securities exchanges. Regulation ATS provides the regulatory framework for those alternative trading systems that choose to be regulated as broker-dealers. Rule 301 of Regulation ATS contains certain notice and reporting requirements, as well as additional obligations that only apply to alternative trading systems with significant volume. Rule 301 describes the conditions with which an alternative trading system must comply to be registered as a broker-dealer. The Rule requires all alternative trading systems that wish to comply with Regulation ATS to file an initial operation report on Form ATS. The initial operation report requires information regarding operation of the system including the method of operation, access criteria and the types of securities traded. Alternative trading systems are also required to supply updates on Form ATS to the Commission, describing material changes to the system, and quarterly transaction reports on Form ATS–R. Alternative trading systems are also required to file cessation of operations reports on Form ATS.

Alternative trading systems with significant volume are required to comply with requirements for fair access and systems capacity, integrity and security. Under Rule 301, such alternative trading systems are required to establish standards for granting access to trading on its system. In addition, upon a decision to deny or limit an investor's access to the system, an alternative trading system is required to provide notice to the investor of the denial or limitation and their right to an appeal to the Commission. Regulation

ATS requires alternative trading systems to preserve any records made in the process of complying with the systems' capacity, integrity and security requirements. In addition, such alternative trading systems are required to notify Commission staff of material systems outages and significant systems changes.

The Commission uses the information provided pursuant to the Rule to comprehensively monitor the growth and development of alternative trading systems to confirm that investors effecting trades through the systems are adequately protected, and that the systems do not impede the maintenance of fair and orderly securities markets or otherwise operate in a manner that is inconsistent with the federal securities laws. In particular, the information collected and reported to the Commission by alternative trading systems enables the Commission to evaluate the operation of alternative trading systems with regard to national market system goals, and monitor the competitive effects of these systems to ascertain whether the regulatory framework remains appropriate to the operation of such systems. Without the information provided on Forms ATS and ATS–R, the Commission would not have readily available information on a regular basis in a format that will allow it to determine whether such systems have adequate safeguards.

Respondents consist of alternative trading systems that choose to register as broker-dealers and comply with the requirements of Regulation ATS. The Commission estimates that there are currently approximately 50 respondents.

An estimated 50 respondents will file an average total of 379 responses per year, which corresponds to an estimated annual response burden of 1532.5 hours. At an average cost per burden hour of approximately $77.03, the resultant total related cost of compliance for these respondents is $118,046.26 per year (1,532.5 burden hours multiplied by $77.03 per hour; a slight discrepancy is due to arithmetic rounding).

Written 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 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: June 8, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13632 Filed 6–16–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 21, 2004:

An Open Meeting will be held on Wednesday, June 23, 2004 at 9:30 a.m. in Room 1C30; and a Closed Meeting will be held on Thursday, June 24, 2004 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Goldschmid, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter for the Open Meeting scheduled for Wednesday June 23, 2004 will be:

1. The Commission will consider whether to adopt amendments to short sale regulation under new Regulation SHO, and revisions to Rule 105 of Regulation M (short selling in connection with a public offering), both under the Securities Exchange Act of 1934.

For further information please contact Kevin Campion, Lillian Hagen, or Alexandra Albright at (202) 942–0772.

2. The Commission will consider whether to adopt amendments to Schedule 14A under the Securities Exchange Act of 1934, and to Forms N–1A, N–2, and N–3 under the Securities Act of 1933 and the Investment Company Act of 1940. The amendments would require a registered management investment company to provide disclosure in its reports to shareholders regarding the basis for the board of directors' approval of an investment advisory contract. They would also enhance existing disclosure requirements in proxy statements regarding the basis for the board's recommendation that shareholders approve an advisory contract.

For further information, please contact Deborah D. Skeens at (202) 942–0562.

3. The Commission will consider whether to adopt amendments to rules 0–1, 10f–3, 12b–1, 15a–4, 17a–7, 17a–8, 17d–1, 17e–1, 17g–1, 18f–3, and 23c–3 under the Investment Company Act of 1940, to require investment companies that rely on certain exemptive rules to adopt certain governance practices. The Commission also will consider whether to adopt an amendment to rule 31a–2, the investment company recordkeeping rule, to require that investment companies retain copies of written materials that the directors consider when approving investment advisory contracts.

For further information, please contact Catherine E. Marshall at (202) 942–0719.

The subject matter for the Closed Meeting scheduled for Thursday, June 24, 2004 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: June 15, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–13901 Filed 6–15–04; 3:55 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49846; International Series Release No. 1277]

List of Foreign Issuers That Have Submitted Information Under the Exemption Relating to Certain Foreign Securities

June 10, 2004.

Foreign private issuers with total assets in excess of $10,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more reside in the United States, are subject to registration under section

12(g) of the Securities Exchange Act of 1934 [1] (the ''Act'').[2]

Rule 12g3–2(b)[3] provides an exemption from registration under section 12(g) of the Act with respect to a foreign private issuer that submits to the Commission, on a current basis, the material required by the Rule. The informational requirements are designed to give investors access to certain information so they have the opportunity to inform themselves about the issuer. The Rule requires the issuer to provide the Commission with information that it: (1) Has made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized; (2) has filed or is required to file with a stock exchange on which its securities are traded and that was made public by such exchange; and/or (3) has distributed or is required to distribute to its security holders.

When the Commission adopted Rule 12g3–2(b) and other rules [4] relating to foreign securities, it indicated that from time to time it would publish lists of foreign issuers that have claimed exemptions from the registration provisions of section 12(g) of the Act.[5] The purpose of this release is to call to the attention of brokers, dealers, and investors that some form of relatively current information concerning the issuers included in this list is available in our public files.[6] We also wish to bring to the attention of brokers, dealers, and investors the fact that current information concerning foreign issuers may not necessarily be available in the United States.[7] We continue to expect that brokers and dealers will consider this fact in connection with their obligations under the federal securities laws to have a reasonable basis for recommending those securities to their customers.[8]

You may direct any questions regarding Rule 12g3–2 or the list of issuers in this release to Michael Pressman, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, DC 20549–0302 ((202) 942–2990). This release is available on the Commission's Web site: *http://www.sec.gov/rules/other/shtml.*

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Dated: June 10, 2004.

Margaret H. McFarland,

Deputy Secretary.

Company name	Country	File number
4 Imprint Group plc	United Kingdom	82–5104
AB Lietuvos Telekomas	Lithuania	82–5086
ABSA Group Ltd	South Africa	82–4569
Accor S.A	France	82–4672
ACOM Co. Ltd	Japan	82–4121
Acclaim Energy Trust	Canada	82–34789
Adidas Salomon AG	Germany	82–4278
Advanced Info Service Public Co. Ltd	Thailand	82–3236
Advantage Energy Income Fund	Canada	82–34742
AEM S.p.A	Italy	82–4911
Aeroflot Russian International Airlines	Russia	82–4592
African Gem Resources Ltd	South Africa	82–34638
African Marine Minerals Corp	Canada	82–3329
Agenix Ltd	Australia	82–34639
AIFUL Corp	Japan	82–4802
Airspray N.V	Netherlands	82–34700
Aldeasa S.A	Spain	82–4774
All Nippon Airways Co. Ltd	Japan	82–1569
Allgreen Properties Ltd	Singapore	82–4959
Alpha General Holdings Ltd	Bermuda	82–34649
Altai Resources, Inc	Canada	82–2950
Altran Technologies S.A	France	82–5164
Amadeus Global Travel Distribution S.A	Spain	82–5173
America Telecom S.A. de C.V	Mexico	82–34636
American Manor Corp	Canada	82–4158
AMP Ltd	Australia	82–34713
AMRAD Corp. Ltd	Australia	82–4867
AmSteel Corp Berhad	Malaysia	82–3318
Angang New Steel Co. Ltd	China	82–34663
Anglo American Corp. of South Africa	South Africa	82–97
Anglo Irish Bank Corp. plc	Ireland	82–3791
Antenna 3 de Television SA	Spain	82–34762
Antofagasta plc	United Kingdom	82–4987
AO Mosenergo	Russia	82–4475
AO Samaraenergo	Russia	82–4708
AO Siberian Oil Company	Russia	82–4882
AO Surgutneftegas	Russia	82–4302
AO TD Gum	Russia	82–4132

[1] 15 U.S.C. 78a *et seq.*

[2] Foreign issuers may also be subject to the registration requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States, and may be subject to the reporting requirements of the Act by reason of having registered securities under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*

[3] 17 CFR 240.12g3–2(b).

[4] Exchange Act Release No. 8066 (April 28, 1967).

[5] Exchange Act Release No. 48063; International Series Release No. 1269 (June 19, 2003) was the last such list.

[6] Inclusion of an issuer on the list in this release is not an affirmation by the Commission that the issuer has complied or is complying with all the conditions of Rule 12g3–2(b). The list does identify the issuers that have both claimed the exemption and have submitted relatively current information to the Commission as of June 2, 2004.

[7] Paragraph (a)(4) of Rule 15c2–11 (17 CFR 240.15c2–11) requires a broker-dealer initiating a quotation for securities of a foreign private issuer to review, maintain in its files, and make reasonably available upon request the information furnished to the Commission pursuant to Rule 12g3–2(b) since the beginning of the issuer's last fiscal year.

[8] *See, e.g., Hanley* v. *SEC,* 415 F.2d 589 (2d Cir. 1969) (broker-dealer cannot recommend a security unless an adequate and reasonable basis exists for such recommendation).

Company name	Country	File number
Apasco	Mexico	82–3103
APF Energy Trust	Canada	82–5166
Applied Gaming Solutions of Canada Inc	Canada	82–4832
Applied Optical Technologies plc	United Kingdom	82–5165
Aquarius Platinum Ltd	Bermuda	82–5097
Arcelor SA	Luxembourg	82–34727
Arcon International Resources plc	Ireland	82–4803
Argent Resources Ltd	Canada	82–5091
Arisawa Manufacturing Co. Ltd	Japan	82–4620
Artel Solutions Group Holdings Limited	Cayman Islands	82–34697
Asia Fiber Public Co. Ltd	Thailand	82–2842
Assa Abloy AB	Sweden	82–34735
Atco Ltd	Canada	82–34745
Atlas Copco	Sweden	82–812
Aur Resources Inc	Canada	82–4624
Aurora Platinum Inc	Canada	82–34760
Australian Gas Light Company	Australia	82–4797
Austrian Airlines	Austria	82–4970
Auterra Ventures Inc	Canada	82–4653
Avalon Ventures Ltd	Canada	82–4427
Avgold Ltd	South Africa	82–4482
BAA plc	United Kingdom	82–3372
Bacardi Ltd	Bermuda	82–4992
BAE Systems PLC	United Kingdom	82–3138
Banca Popolare di Lodi	Italy	82–4855
Banco Mercantil S.A	Bolivia	82–4296
Banco Venezolano de Credito SA Banco Universal	Venezuela	82–4422
Bandai Co. Ltd	Japan	82–3919
Bangkok Bank Public Co. Ltd	Thailand	82–4835
Bank Austria Creditanstalt AG	Austria	82–34765
Bank of East Asia Ltd	Hong Kong	82–3443
Bank of Fukuoka Ltd	Japan	82–1117
Bank Vozrozhdeniye	Russia	82–4257
BankInter S.A	Spain	82–2972
Bayerische Hypotheken Und Wechsel Bank AG	Germany	82–3777
BCE Emergis Inc	Canada	82–5206
Beijing Datang Power Generation Co. Ltd	China	82–5186
Beijing Enterprises Holdings Ltd	Hong Kong	82–34642
Belluna Co. Ltd	Japan	82–5233
Benfield Group Ltd	Bermuda	82–34726
Beru AG	Germany	82–34750
Bespak plc	United Kingdom	82–3349
Beta Systems Software AG	Germany	82–4631
BHP Steel Ltd	Australia	82–34676
BioMS Medical Corp	Canada	82–34689
Bionomics Limited	Australia	82–34682
Blackrock Ventures Inc	Canada	82–4555
BNP Paribas	France	82–3757
BOC Hong Kong Holdings Ltd	Hong Kong	82–34675
Bohler Uddeholm AG	Austria	82–4089
Boliden Ltd	Canada	82–4707
Bombardier Inc	Canada	82–3123
Boots Group plc	United Kingdom	82–34701
Boral Ltd	Australia	82–5054
Bradford & Bingley plc	United Kingdom	82–5154
Brambles Industries plc	United Kingdom	82–5205
Brazil Realty S.A	Brazil	82–4454
Bresagen Ltd	Australia	82–5135
Bridgestone Corp	Japan	82–1264
British Land Co. Ltd	United Kingdom	82–34741
Bull	France	82–4847
Burberry Group plc	United Kingdom	82–34691
Burns Philip & Company Ltd	Australia	82–1565
BWT Aktiengesellschaft	Austria	82–5221
C Squared Developments Inc	Canada	82–1756
C.I. Fund Management Inc	Canada	82–4994
Cal-Star Inc	Canada	82–2406
Canadian Everock Explorations Inc	Canada	82–5163
Canadian Oil Sands Trust	Canada	82–5189
Canadian Utilities Ltd	Canada	82–34744
Canadian Western Bank	Canada	82–4478
Cap Gemini S.A	France	82–5065
Capitaland Ltd	Singapore	82–4507
Caribbean Cement Co. Ltd	Jamaica	82–3715

Company name	Country	File number
Carso Global Telecom	Mexico	82–4379
Cassa di Risparmio di Firenze S.p.A	Italy	82–5126
Cathay Pacific Airlines Ltd	Hong Kong	82–1390
Cementos Lima S.A	Peru	82–3911
Central Termica Guemas S.A	Argentina	82–5145
Centrica plc	United Kingdom	82–4518
Cerveceria Nacional S.A	Panama	82–4704
CESP Companhia Energetica de Sao Paulo	Brazil	82–3691
Challenger Minerals Ltd	Canada	82–3666
Champion Natural Health Com Inc	Canada	82–4485
Champion Technology Holdings Ltd	Cayman Islands	82–3442
Cheung Kong Holdings Ltd	Hong Kong	82–4138
Chevalier International Holdings	Bermuda	82–4203
Chevalier iTech Holdings Ltd	Bermuda	82–4201
China Oilfield Services Ltd	China	82–34696
China Online Bermuda Ltd	Bermuda	82–3654
China Pharmaceutical Enterprise & Investment Corp	Hong Kong	82–4135
China Resources Enterprise Ltd	Hong Kong	82–4177
China Steel Corp	Taiwan	82–3296
China Strategic Holdings Ltd	Hong Kong	82–3596
Chr. Hansen Holding A/S	Denmark	82–34732
Chugai Pharmaceutical Co. Ltd	Japan	82–34668
Cia Forca e Luz Cataguases Leopoldina	Brazil	82–5147
CITIC Pacific Ltd	Hong Kong	82–5232
Citiraya Industries Ltd	Singapore	82–34706
CML Microsystems plc	United Kingdom	82–3176
Coca Cola Amatil Ltd	Australia	82–2994
Columbia Yukon Exploration	Canada	82–34776
Commercial International Bank	Egypt	82–34764
Companhia Acos Especiais Itabira-Acesita	Brazil	82–3769
Companhia de Transmissao de Energeria Electrica Paulista.	Brazil	82–4980
Companhia Siderurgica Belgo Mineira	Brazil	82–3771
Companhia Suzano De Papel E Celulose	Brazil	82–3550
Compass Group plc	United Kingdom	82–5161
Computershare Ltd	Australia	82–4966
Concept Wireless Inc	Canada	82–4003
Continental AG	Germany	82–1357
Continental Precious Minerals Inc	Canada	82–3358
Cora Resources Ltd	Canada	82–4571
Corpbanca	Chile	82–34763
Corporacion Geo S.A. de C.V	Mexico	82–3870
Corporacion Mapfre Co. Internacional de Reaseguros SA	Spain	82–1987
Corriente Resources Inc	Canada	82–3775
Credit Agricole S.A	France	82–34771
Credit Suisse First Boston	Switzerland	82–4705
Cross Lake Minerals Ltd	Canada	82–2636
CSK Corporation	Japan	82–781
Cue Energy Resources Limited	New Zealand	82–34692
Curran Bay Resources	Canada	82–34724
Cybird Co. Ltd	Japan	82–5139
Cycle & Carriage Ltd	Singapore	82–3163
Daido Life Insurance Co	Japan	82–34658
Dairy Farm International Holdings Ltd	Hong Kong	82–2962
Danisco SA	Denmark	82–3158
Davide Campari Milano S.p.A	Italy	82–5203
DBS Group Holdings Ltd	Singapore	82–3172
De Longhi S.p.A	Italy	82–34652
Del Monte Pacific Ltd	British Virgin Islands	82–5068
Den Danske Bank Aktieselskab	Denmark	82–1263
Dentsu Inc	Japan	82–5241
DEPFA Deutsche Pfandbriefbank AG	Germany	82–4822
Deutsche Beteiligungs Holding AG	Germany	82–4977
Deutsche Lufthansa AG	Germany	82–4691
Dexia Belgium	Belgium	82–4606
Dixons Group plc	United Kingdom	82–3331
Dofasco Inc	Canada	82–3226
DSM N.V	Netherlands	82–3120
E New Media Co. Ltd	Hong Kong	82–5101
East Japan Railway Co	Japan	82–4990
Eastmain Resources Inc	Canada	82–4421
Edcon Consolidated Stores Ltd	South Africa	82–34767
Editora Saraiva S.A	Brazil	82–5046
Eiffel Technologies Ltd	Australia	82–34747

Company name	Country	File number
Eisai Co. Ltd	Japan	82–4015
E-Kong Group Ltd	Bermuda	82–34653
Electrocomponents plc	United Kingdom	82–34672
Elementis plc	United Kingdom	82–34751
Emgold Mining Corp	Canada	82–3003
EMI Group plc	United Kingdom	82–373
Enerco Energy Service Co., Inc	Canada	82–1162
Energy Africa Ltd	South Africa	82–4306
EnviroMission Limited	Australia	82–34693
Erciyas Biracilik ve Malt Sanayi AS	Turkey	82–4144
Erste Bank	Austria	82–5066
Essilor International	France	82–4944
European Aeronautic Defence & Space Co	Netherlands	82–34662
Eurotunnel plc	United Kingdom	82–3000
Eurotunnel S.A	France	82–2999
Evergreen Forests Ltd	New Zealand	82–4114
Exel plc	United Kingdom	82–34655
Expo Resources Inc	Canada	82–34730
Fancamp Resources Ltd	Canada	82–3929
FANCL Corporation	Japan	82–5032
Far East Pharmaceutical Technology Co Ltd	Cayman Islands	82–34768
Ferreyros SA	Peru	82–34695
First Australian Resources N.L	Australia	82–3494
First Pacific Co. Ltd	Hong Kong	82–836
First Quantum Minerals Ltd	Canada	82–4461
First Silver Reserve Inc	Canada	82–3449
First Tractor Company Ltd	China	82–4772
FJA AG	Germany	82–5077
Focus Energy Trust	Canada	82–34761
Fomento de Construcciones y Contratas SA	Spain	82–3743
Forenings Sparbanken AB	Sweden	82–4092
Fortis Amev	Belgium	82–3118
Fortis S.A./N.V	Belgium	82–5234
Foschini Ltd	South Africa	82–4044
Fosters Brewing Group Ltd	Australia	82–1711
Frankie Dominion International Ltd	Hong Kong	82–3649
Friends Provident plc	United Kingdom	82–34640
Frutarom Industries Ltd	Israel	82–4357
Fubon Insurance Co. Ltd	Taiwan	82–4788
Fuji Photo Film Co. Ltd.	Japan	82–78
Fuji Television Network	Japan	82–5176
Fujitsu Support & Service	Japan	82–4885
Funai Electric Ltd	Japan	82–5078
G. Accion S.A. de C.V	Mexico	82–4590
Gallery Resources Ltd	Canada	82–2877
Gambro AB	Sweden	82–34731
Gamesa S.A	Spain	82–5201
Genemedix Plc	United Kingdom	82–34784
Generale de Sante S.A	France	82–34626
Genetic Technologies Ltd	Australia	82–34627
Genting Berhad	Malaysia	82–4962
GGL Diamond Corp	Canada	82–1209
Giordano International Ltd	Bermuda	82–3780
Gitennes Exploration Inc	Canada	82–4170
Givaudan SA	Switzerland	82–5087
Glanbia Public Ltd	Ireland	82–4734
Globel Direct Inc	Canada	82–5084
Glorius Sun Enterprises Ltd	Bermuda	82–4581
Golconda Resources Ltd	Canada	82–3167
Gold Peak Industries (Holdings) Ltd	Hong Kong	82–3604
Goldas Kuyumculuk Sanayi Ithalat Ihracat AS	Turkey	82–5223
Goldcliff Resource Corp	Canada	82–2748
Golden Arch Resources Ltd	Canada	82–659
Golden Hope Mines Ltd	Canada	82–3023
Grand Hotel Holdings Ltd	Hong Kong	82–3408
Grasim Industries Ltd	India	82–3322
Great Eagle Holdings Ltd	Bermuda	82–3940
Great Quest Metals Ltd	Canada	82–3116
Great-West Lifeco Inc	Canada	82–34728
Greencore Group plc	Ireland	82–4908
Grupo Carso S.A. de C.V	Mexico	82–3175
Grupo Dataflux	Mexico	82–4899
Grupo Ferrovial S.A	Spain	82–4939
Grupo Financiero BBVA Bancomer S.A. de C.V	Mexico	82–3273

Company name	Country	File number
Grupo Financiero Inbursa S.A. de C.V	Mexico	82–4243
Grupo Gigante, S.A. de C.V	Mexico	82–3142
Grupo Herdez S.A. de C.V	Mexico	82–3818
Grupo Industrial Saltillo	Mexico	82–5019
Grupo Melo S.A	Panama	82–4893
Grupo Mexico S.A. de C.V	Mexico	82–4582
Grupo Minsa SA DE CV	Mexico	82–4453
Grupo Modelo S.A. de C.V	Mexico	82–34766
Grupo Posadas S.A. de C.V	Mexico	82–3274
GTECH International Resources Ltd	Canada	82–3779
Guangdong Investment Ltd	Hong Kong	82–3772
Guangzhou Investment Co. Ltd	Hong Kong	82–4247
GUS plc	United Kingdom	82–5017
Gzitic Hauling Holdings Ltd	Hong Kong	82–4195
H. Lundbeck A.S	Denmark	82–4973
Hagemeyer N.V	Netherlands	82–4865
Hang Lung Properties Ltd	Hong Kong	82–3410
Hang Seng Bank Ltd	Hong Kong	82–1747
Hanny Holdings Ltd	Bermuda	82–3638
Hansom Eastern Holdings Ltd	Cayman Islands	82–4152
Harvest Energy Trust	Canada	82–34779
HBOS plc	United Kingdom	82–5222
Heineken Holding N.V	Netherlands	82–5149
Heineken N.V	Netherlands	82–4953
Henderson Investment Ltd	Hong Kong	82–3964
Henderson Land Development Co. Ltd	Hong Kong	82–1561
Henkel KGAA	Germany	82–4437
Henlys Group plc	United Kingdom	82–5051
Herald Resources Ltd	Australia	82–4295
HHG plc	United Kingdom	82–34758
Highveld Steel & Vanadium Corp. Ltd	South Africa	82–596
Hikari Tsushin Inc	Japan	82–4998
Hilasal Mexicana S.A. de C.V	Mexico	82–4743
Hindalco Industries Ltd	India	82–3428
Hip Interactive Corp	Canada	82–34720
Hoganas AB	Sweden	82–3754
Hokuriku Bank Ltd	Japan	82–1045
Holcim Ltd	Switzerland	82–4093
Hong Kong & China Gas Company Ltd	Hong Kong	82–1543
Hong Kong Construction Holdings Ltd	Hong Kong	82–4029
Hong Kong Electric Holdings	Hong Kong	82–4086
Hopewell Highway Infrastructure Ltd	Hong Kong	82–34781
Hopewell Holdings Ltd	Hong Kong	82–1547
Horizon Technology Group	Ireland	82–34782
Hornbach-Baumarkt AG	Germany	82–3729
Hylsamex S.A. de C.V	Mexico	82–4252
Hypo Real Estate Holding AG	Germany	82–34748
Hypothekenbank in Essen AG	Germany	82–4883
Hysan Development Company Ltd	Hong Kong	82–1617
Hyundai Motor Company	Korea	82–3423
I.T.C. Limited	India	82–3470
ICAP plc	United Kingdom	82–4904
IEM S.A. de C.V	Mexico	82–2337
Impala Platinum Holdings Ltd	South Africa	82–359
Imperial Metals Corp	Canada	82–34714
Imperial One International Ltd	Australia	82–1257
Inca Pacific Resources Inc	Canada	82–1665
Industria de Diseno Textil S.A	Spain	82–5185
Interconexion Electrica	Colombia	82–34786
International Health Partners Inc	Canada	82–4868
International PBX Ventures Ltd	Canada	82–2635
International Road Dynamics Inc	Canada	82–3899
Internet Identity Presence Co. Inc	Canada	82–478
Interpump Group S.p.A	Italy	82–4511
Interstar Mining Group. Inc	Canada	82–3759
Invensys plc	United Kingdom	82–2142
Investor AB	Sweden	82–34698
IT Holding SpA	Italy	82–4728
Italian Thai Development Public Co. Ltd	Thailand	82–4299
Itech Capital Corp	Canada	82–3200
Jamaica Broilers Group Ltd	Jamaica	82–3720
Jannock Properties Ltd	Canada	82–5062
Japan Airlines Company Ltd	Japan	82–122
Japan Future Information Technology & Systems	Japan	82–34657

Company name	Country	File number
Japan Retail Fund Investment Corp	Japan	82–34716
Jardine Matheson Holdings Ltd	Bermuda	82–2963
Jardine Strategic Holdings Ltd	Bermuda	82–3085
Jasmine International Public Co. Ltd	Thailand	82–4876
JCDecaux S.A	France	82–34631
JD Group Limited	South Africa	82–4401
JG Summit Holdings Inc	Philippines	82–3572
Jiangxi Copper Co. Ltd	China	82–34715
Jinhui Holdings Co. Ltd	Hong Kong	82–3765
Jinhui Shipping & Transportation Ltd	Bermuda	82–4054
JKX Oil & Gas plc	United Kingdom	82–34709
Johnnic Communications Ltd	South Africa	82–5184
Johnnic Holdings Ltd	South Africa	82–5128
Johnson Electric Holdings Ltd	Hong Kong	82–2416
Johnson Matthey plc	United Kingdom	82–2272
Jones David Ltd	Australia	82–4230
JSAT Corp	Japan	82–5111
JSC Irkutskenergo	Russia	82–4458
JSC Moscow City Telephone Network	Russia	82–4957
JSC Uralsvyasinform	Russia	82–4545
Justsystem Corp	Japan	82–4732
K Wah Construction Materials Ltd	Hong Kong	82–3850
Kao Corp	Japan	82–34759
Kawasaki Heavy Industries Ltd	Japan	82–4389
KCT Konecranes plc	Finland	82–4297
Keells John Holdings Ltd	Sri Lanka	82–3854
Keika Express Co. Ltd	Japan	82–34718
Kelso Technologies Inc	Canada	82–2441
KGHM Polska Miedz S.A	Poland	82–4639
Kidde plc	United Kingdom	82–5153
Kimberly Clark de Mexico S.A. de C.V	Mexico	82–3308
Kingfisher plc	United Kingdom	82–968
Kirin Brewery Co	Japan	82–188
Klabin S.A	Brazil	82–34628
Kobe Steel Ltd	Japan	82–3371
Komercni Banka A.S	Czech Republic	82–4154
Koninklijke Wessanen NV	Netherlands	82–1306
Krones AG	Germany	82–3871
Kuala Lumpur Kepong Berhad	Malaysia	82–5022
Kvaerner AS	Norway	82–3745
Ladbroke Group plc	United Kingdom	82–1571
Lagardere Groupe SCA	France	82–3916
Lake Shore Gold Corporation	Canada	82–34769
Landesbank Rheinland-Phalz	Germany	82–4930
Legacy Hotels Real Estate Investment Trust	Canada	82–34729
Legend Group Ltd	Hong Kong	82–3950
Lend Lease Corp. Ltd	Australia	82–3498
Lenzing AG	Austria	82–3207
LG Electronics Inc	Korea	82–3857
Liberty International plc	United Kingdom	82–34722
Lindsey Morden Group	Canada	82–5143
Lion Industries Corp	Berhad Malaysia	82–3342
Loblaw Companies Ltd	Canada	82–4918
Lonmin plc	United Kingdom	82–191
Lopro Corp	Japan	82–4664
L'Oreal	France	82–735
Lukoil Oil Co	Russia	82–4006
Macquarie Bank Ltd	Australia	82–34740
Magician Industries Holdings Inc	Bermuda	82–4358
Man Group plc	United Kingdom	82–4214
Mandarin Oriental International Ltd	Hong Kong	82–2955
Manila Electric Co	Philippines	82–3237
Marks & Spencer Group plc	United Kingdom	82–1961
Marubeni Corp	Japan	82–616
Matsui Securities Co. Ltd	Japan	82–5215
Maximum Ventures Inc	Canada	82–3923
Maxis Communications	Malaysia	82–34780
Mayr Melnhof Karton AG	Austria	82–4052
MCK Mining Corp	Canada	82–3938
Mercantil Servicios Financieros C.A	Venezuela	82–4648
Metcash Holdings Limited	Australia	82–34788
Metorex Ltd	South Africa	82–34711
Metro Cash & Carry Ltd	South Africa	82–4279
Metropolitan Holdings Ltd	South Africa	82–34755

Company name	Country	File number
Mexgold Resources Inc	Canada	82–34749
Michael Page International plc	United Kingdom	82–5162
Michelin Compagnie Generale des Etablissements	France	82–3354
MIM Holdings Ltd	Australia	82–173
Minebea Co. Ltd	Japan	82–4551
Mishibishu Gold Corp	Canada	82–2682
Misr International Bank S.A.E	Egypt	82–4629
Mitsubishi Corp	Japan	82–3784
MJ Maillis S.A	Greece	82–4975
Mobistar N.V./S.A	Belgium	82–4965
Mol Rt	Hungary	82–4224
Molson Inc	Canada	82–2954
Morgan Crucible Co. plc	United Kingdom	82–3387
Mosaic Group Inc	Canada	82–34686
Mount Burgess Gold Mining Co	Australia	82–1235
Mytravel Group	United Kingdom	82–5049
Nampak Limited	South Africa	82–3714
National Bank of Canada	Canada	82–3764
NEC Electronics Corp	Japan	82–34733
Nedcor Ltd	South Africa	82–3893
Nestle S.A	Switzerland	82–1252
New GKN	United Kingdom	82–5204
Nintendo Co. Ltd	Japan	82–2544
Nippon Steel Corp	Japan	82–5175
Nissan Motor Co	Japan	82–207
Nomura Research Institute Ltd	Japan	82–34673
Norilsk Nickel	Russia	82–4270
Norske Skogindustrier ASA	Norway	82–5226
Northern Abitibi Mining Corp	Canada	82–4749
Northern Orion Explorations Ltd	Canada	82–3153
Northwest Co. Fund	Canada	82–34737
Norwood Abbey Ltd	Australia	82–34754
Novozymes AS	Denmark	82–5116
NQL Drilling Tools Inc	Canada	82–7052
Nuinsco Resources Ltd	Canada	82–1846
Nutreco Holding N.V	Netherlands	82–4927
NV Umicore S.A	Belgium	82–3876
Nyzhniodniprovsky Pipe Rolling Plant	Ukraine	82–4814
OAO Oil Co. Yukos	Russia	82–4209
OAO United Heavy Machinery Uralmash	Russia	82–5063
Occupational & Medical Innovations Ltd	Australia	82–5174
OJSC Marganetsky Ore Mining & Processing	Ukraine	82–34710
OJSC Rostovenergo	Russia	82–4839
OJSC Volga Telecom	Russia	82–4642
Old Mutual plc	United Kingdom	82–4974
Olivetti S.p.A	Italy	82–5181
Olympus Optical Co. Ltd	Japan	82–3326
Omega Project Co. Ltd	Japan	82–5030
Omron Corp	Japan	82–1170
OMV AG	Austria	82–3209
Onfem Holdings Ltd	Bermuda	82–3735
Ontzinc Corporation	Canada	82–34778
Opap S.A	Greece	82–34699
Open Joint Stock Company Dniproenergo	Ukraine	82–4844
Open Joint Stock Company Ukrnafta	Ukraine	82–4859
Orange S.A	France	82–5168
Orbis S.A	Poland	82–5025
Orkla AS	Norway	82–3998
Osterreichische Elektrizitatswirtschafts	Austria	82–4381
Paccom Ventures	Canada	82–2891
Pacific Andes Int'l Holdings Ltd	Bermuda	82–4031
Pacific Topaz Resources Ltd	Canada	82–1285
Pacrim International Capital Inc	British Virgin Islands	82–3812
Paperlinx Ltd	Australia	82–5061
Paranapanema S.A	Brazil	82–5083
Paul Y ITC Construction Holdings Ltd	Bermuda	82–4217
Peninsular & Oriental Steam Navigation Co	United Kingdom	82–2083
Perfect Fry Corp	Canada	82–1609
Pernod Ricard S.A	France	82–3361
Peter Hambro Mining plc	United Kingdom	82–34734
Peyto Energy Trust	Canada	82–34773
Phoenix Canada Oil Co. Ltd	Canada	82–3936
Pinault Printemps Redoute	France	82–5179
Polski Koncern Naftowy	Poland	82–5036

Company name	Country	File number
Power Corp. of Canada	Canada	82–137
Power Financial Corp	Canada	82–1716
Premier Oil Group plc	Scotland	82–34723
Prima Developments Ltd	Canada	82–34703
Prokom Software S.A	Poland	82–4700
Promatek Industries Ltd	Canada	82–1351
Promise Co. Ltd	Japan	82–4837
Promotora de Informaciones	Spain	82–5213
Provimi	France	82–5212
PSP Swiss Property AG	Switzerland	82–5052
PT Bank Buana Indonesia TBK	Indonesia	82–34694
PTT Exploration & Production plc	Thailand	82–3827
Public Power Corp. S.A	Greece	82–34707
Puma AG Rudolf Dassler Sport	Germany	82–4369
Q P Corporation	Japan	82–4750
Qantas Airways	Australia	82–4130
Rabobank Nederland	Netherlands	82–5010
Radio Gaucha S.A	Brazil	82–4341
Raffles Medical Group	Singapore	82–4926
Randstad Holding NV	Netherlands	82–4956
RAO Gazprom	Russia	82–4670
Raydan Manufacturing Inc	Canada	82–34756
Raytec Development Corp	Canada	82–3553
RBS Participacoes S.A	Brazil	82–4338
RBS TV de Florianopolis S.A	Brazil	82–4340
RE Power Systems AG	Germany	82–34654
Reliance Industries Ltd	India	82–3300
Remgro Ltd	South Africa	82–5106
Renault SA	France	82–4001
Rentokil Initial plc	United Kingdom	82–3806
Resorts World Berhad	Malaysia	82–3229
Rexam plc	United Kingdom	82–3
Rich Minerals Corp	Canada	82–2832
Roadshow Holdings Ltd	Bermuda	82–5208
Roche Holding Ltd	Switzerland	82–3315
Rock Energy Inc	Canada	82–34785
Rock Resources Inc	Canada	82–4504
Rolls Royce Group plc	United Kingdom	82–34721
Rosneftegazstroy	Russia	82–4597
Royal Nedlloyd Group	Netherlands	82–1056
RWE AG	Germany	82–4018
S.A. Fabrica de Productos Alimenticios	Brazil	82–4870
SABMiller plc	United Kingdom	82–4938
Sage Group Ltd	South Africa	82–4241
Sage Group plc	United Kingdom	82–34736
Sahaviriya Steel Industries plc	Thailand	82–5008
SAIA-Burgess Electronics Holding AG	Switzerland	82–4810
Sainsbury J plc	United Kingdom	82–913
Saipem S.p.A	Italy	82–4776
Sammy Corporation	Japan	82–5227
Sam's Seafood Holdings Ltd	Australia	82–34648
Samsung Electronics Co. Ltd	Korea	82–3109
Sancor Cooperativas Unidas Ltd	Argentina	82–4476
Sandvik AB	Sweden	82–1463
Santos Ltd	Australia	82–34
Sanyo Electric Co	Japan	82–264
Sao Paulo Alpargatas SA	Brazil	82–3692
Saputo Inc	Canada	82–34670
Saskatchewan Wheat Pool	Canada	82–5037
Schneider Electric SA	France	82–3706
Schwanberg International Inc	Canada	82–34712
Schwarz Pharma AG	Germany	82–4406
SCMP Group Ltd	Bermuda	82–3327
Securitas AB	Sweden	82–34719
Sega Enterprises Ltd	Japan	82–3439
Seiko Epson Corp	Japan	82–34746
Sekisui House Ltd	Japan	82–5129
Sembcorp Industries Ltd	Singapore	82–5109
Severn Trent plc	United Kingdom	82–2819
Shandong International Power Dev. Co. Ltd	China	82–4932
Shanghai Industrial Holdings Ltd	China	82–5160
Shangri La Asia Ltd	Bermuda	82–5006
Sharp Corp	Japan	82–1116
Shin Corp Public Co. Ltd	Thailand	82–3140

Company name	Country	File number
Shin Satellite Public Co. Ltd	Thailand	82–4527
Shinsei Bank Limited	Japan	82–34775
Shiseido Company Ltd	Japan	82–3311
Shun Tak Holdings Ltd	Hong Kong	82–3357
SIA Engineering Co. Ltd	Singapore	82–5123
Siam Commercial Bank Public Co. Ltd	Thailand	82–4345
Silverstone Corp Berhad	Malaysia	82–3319
Sime Darby Berhad	Malaysia	82–4968
Simsmetal Ltd	Australia	82–3838
Singapore Airport Terminal Services Ltd	Singapore	82–5117
Singapore Telecommunications Ltd	Singapore	82–3622
Singer N.V	Netherlands	82–34635
Skandia Insurance Co. Ltd	Sweden	82–5079
Skandinaviska Enskilda Banken	Sweden	82–3637
Sky Perfect Communications	Japan	82–5113
Slovnaft A.S	Slovak Republic	82–3721
Societe Generale	France	82–3501
Sogecable S.A	Spain	82–4981
Sons of Gwalia Ltd	Australia	82–1039
Southcorp Holdings Ltd	Australia	82–2692
Southern Pacific Petroleum N.L	Australia	82–353
Southern Telecommunications Co	Russia	82–4721
SPL Worldgroup B.V	Netherlands	82–34708
St. George Bank Ltd	Australia	82–3809
St. Jude Resources Ltd	Canada	82–4014
Standard Chartered plc	United Kingdom	82–5188
Starlight International Holdings Ltd	Bermuda	82–3594
Starrex Mining Corp Ltd	Canada	82–3755
State Bank of India	India	82–4524
Steinhoff International Holdings Ltd	South Africa	82–34722
Stina Resources Ltd	Canada	82–2062
Studsvik AB	Sweden	82–5172
Sultan Minerals Inc	Canada	82–4741
Sumitomo Corp	Japan	82–34680
Sumitomo Metal Industries Ltd	Japan	82–3507
Sumitomo Mitsui Financial Group Inc	Japan	82–4395
Sumitomo Trust & Banking Co. Ltd	Japan	82–4617
Sun Hung Kai Properties Ltd	Hong Kong	82–1755
Superior Diamonds Inc	Canada	82–34752
Suzano Petroquimica S.A	Brazil	82–34667
Svenska Cellulosa Aktiebolagot	Sweden	82–763
Swire Pacific Ltd	Hong Kong	82–2184
Swiss Reinsurance Co	Switzerland	82–4248
Synex International Inc	Canada	82–862
T & D Holdings Inc	Japan	82–34783
Tabcorp Holdings Ltd	Australia	82–3841
Tai Cheung Holdings Ltd	Bermuda	82–3528
Tata Engineering & Locomotive Co. Ltd	India	82–3768
Taylor Nelson Sofres plc	United Kingdom	82–4668
Techtronic Industries Co. Ltd	Hong Kong	82–3648
Telefonica Data Peru S.A.A	Peru	82–34646
Telefonica Moviles Peru Holding S.A.A	Peru	82–34645
Telepizza	Spain	82–5001
Televisao Gaucha S.A	Brazil	82–4339
Tennyson Networks Ltd	Australia	82–5138
Tesco PLC	United Kingdom	82–3277
TFS	Switzerland	82–5095
Thai Farmers Bank Public Co. Ltd	Thailand	82–4922
Thoughtshare Communications	Canada	82–2442
THUS Group plc	United Kingdom	82–34650
Tianjin Capital Environmental Protection Co. Ltd	China	82–34739
TNR Resources Ltd	Canada	82–4434
Tofas Turk Otomobil Fabrikasi AS	Turkey	82–3699
Tomorrow International Holdings Ltd	Bermuda	82–4256
T-Online International AG	Germany	82–5125
Topper Resources Inc	Canada	82–34757
Toyota Industries Corporation	Japan	82–5112
Toys "R" Us Japan Ltd	Japan	82–5073
Tractebel Energia	Brazil	82–4760
Tradehold Ltd	South Africa	82–5238
Transportadora de Gas del Norte S.A	Argentina	82–3845
TravelSky Technology Ltd	China	82–34687
Truly International Holdings	Cayman Islands	82–3700
Tsingtao Brewery Company Ltd	China	82–4021

Company name	Country	File number
TT&T Public Co. Ltd	Thailand	82–3744
U.S. Commercial Corp. S.A. de C.V	Mexico	82–34669
UFJ Holdings Inc	Japan	82–5169
Unaxis Holding Inc	Switzerland	82–34643
UNI President Enterprises Co	Taiwan	82–3424
Unicharm Corporation	Japan	82–4985
Unicredito Italiano	Italy	82–3185
United Bank for Africa plc	Nigeria	82–4804
United Grain Growers Ltd	Canada	82–34725
United Overseas Bank Ltd	Singapore	82–2947
USA Video Interactive Corp	Canada	82–1601
Usinas Siderurgicas de Minas Gerais S.A	Brazil	82–3902
Valeo S.A	France	82–3668
Valerie Gold Resources Ltd	Canada	82–3339
Vanteck VRB Technology Corp	Canada	82–34688
Vedior N.V	Netherlands	82–4654
Velcro Industries. N.V	Neth. Ant	82–145
Venfin Ltd	South Africa	82–3760
Ventracor Ltd	Australia	82–4630
Vermilion Resources Ltd	Canada	82–34704
Viceroy Resource Corp	Canada	82–1193
Victoria Resources Corporation	Canada	82–2888
Village Roadshow Ltd	Australia	82–4513
Vinci	France	82–4781
VNU N.V	Netherlands	82–2876
Vodafone Panafon Hellenic Telecommunications	Greece	82–4969
Vodafone Telecel Comunicacoe Pessoais S.A	Portugal	82–4528
Vodatel Networks Holdings Ltd	Bermuda	82–5146
Vri Biomedical Ltd	Australia	82–34683
Vtech Holdings Ltd	Bermuda	82–3565
Wal Mart de Mexico S.A. de C.V	Mexico	82–4609
Wanadoo	France	82–5150
Washtec AG	Germany	82–4888
West Japan Railway Co	Japan	82–34777
Westone Ventures Inc	Canada	82–4890
Windarra Minerals Ltd	Canada	82–561
Wolford AG	Austria	82–4403
Wolfson Microelectronics plc	Scotland	82–34753
Woodside Petroleum Ltd	Australia	82–2280
WPN Resources Ltd	Canada	82–2418
Wrightson Ltd	New Zealand	82–3646
X-Cal Resources Ltd	Canada	82–1655
Xstrata plc	United Kingdom	82–34660
Yamaha Corp	Japan	82–34717
Yara International ASA	Norway	82–34770
Yeebo International Holdings Ltd	Bermuda	82–3869
Yell Group plc	United Kingdom	82–34674
Zero Hora-Editora Jornalistica S.A	Brazil	82–4337
Zhejiang Expressway Co. Ltd	China	82–34629
Zurich Financial Services	Switzerland	82–5089

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49840; File No. SR–Amex–2004–23]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by American Stock Exchange LLC and Amendment No. 1 Thereto Relating to Generic Listing Standards for Trust Certificate Securities Linked to a Portfolio of Investment Grade Securities

June 9, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 19, 2004, the American Stock Exchange LLC (''Amex'' 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 Exchange. On May 12, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] *See* Letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, (''Division''), Commission, dated May 12, 2004. In Amendment No. 1, the Amex made technical changes to its proposed rule filing.

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 proposes to add new Section 107E to the Amex Company Guide (''Company Guide'') to provide generic listing standards for qualified trust certificate securities (''Trust Securities'') [4] pursuant to Rule 19b–4(e) under the Act.

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in [brackets].

* * * * *

Section 107. Other Securities

The Exchange will consider listing any security not otherwise covered by the criteria of Sections 101 through 106, provided the issue is otherwise suited for auction market trading. Such issues will be evaluated for listing against the following criteria:

A–C. No Change

D. Reserved

E. Trust Certificate Securities

(a) *Initial Listing. Trust certificate securities representing an ownership interest in a special purpose trust created pursuant to a trust agreement, the assets of which consists primarily of a basket or portfolio of up to thirty (30) investment-grade fixed income or floating rate securities will be considered for listing and trading on the Exchange pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, provided:*

i. *The trust certificates meet the requirements under the Securities Act of 1933 in connection with asset-backed securities.*

ii. *The underlying portfolio securities consist solely of investment-grade corporate debt or debentures (the ''Underlying Bonds''), U.S. Department of the Treasury securities (''Treasury Securities'') and government-sponsored entity securities (the ''GSE Securities'').*

iii. *Each issuer of an Underlying Bond and GSE Security meets the criteria set forth above in Section 107A(a) under ''General Criteria.''*

iv. The trust meets the criteria set forth above in Section 107A under ''General Criteria,'' except for the asset/equity tests of Section 107A(a).

v. Each Underlying Security will meet the Exchange's Bond and Debenture Listing Standards set forth in Section 104 of the Company Guide and be rated by a nationally recognized securities rating organization (an ''NRSRO'') that is no lower than an S&P Corporation ''B'' rating or equivalent rating by another NRSRO.

vi. Up to 15% of the underlying component securities at issuance may consist of Treasury Securities and GSE Securities.

vii. The trust certificates will provide for the repayment of the original principal investment amount at the end of the term.

viii. The trust certificates will provide for the pass-through of periodic payments of interest and principal of the underlying securities.

iv. The trust certificates have a minimum term of five years.

x. At least 75% of the component securities of the underlying portfolio must be from issuances of $100 million or more.

Prior to commencement of the trading of trust certificate securities admitted to listing under this section, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member firm compliance responsibilities when handling transactions in such securities.

(b) Continued Listing. Trust certificate securities listed and traded under this section will be subject to the continued listing guidelines for bonds set forth in Section 1003(b)(iv). Under Section 1003(b)(iv), the Exchange will normally consider suspending or delisting a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000 or the issuer is not able to meet its obligations on the listed securities.

(c) Trust certificate securities traded in thousand dollar denominations or multiples thereof will be treated as a debt instrument and will be subject to the debt trading rules of the Exchange. Trust certificate securities traded in other than thousand dollar denominations or multiples thereof will be treated as an equity instrument and subject to the equity trading rules of the Exchange.

* * * * *

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 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. The 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new Section 107E to the Company Guide to provide generic listing standards to permit the listing and trading of qualified Trust Securities pursuant to Rule 19b–4(e) under the Act. Trust Securities represent an ownership interest in a special purpose trust created pursuant to a trust agreement (''Trust''). The assets of such Trust may consist of a basket or portfolio of up to thirty (30) investment-grade corporate securities (''Underlying Bonds''), securities issued by the United States Department of the Treasury (Treasury Securities'') [5] and/or government-sponsored entity securities (''GSE securities''). In the aggregate, the component securities of the basket or portfolio will be referred to as the ''Underlying Securities.'' Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to section 19(b) of the Act, the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivative securities product, and the self-regulatory organization has a surveillance program for the product class.[6]

The Commission has previously approved the listing and trading of several Trust Securities by the Exchange.[7] In approving these securities

[4] A qualified Trust Security is required to meet the requirements for asset-backed securities as set forth in the Securities Act of 1933 (''Securities Act'').

[5] Treasury Securities include (''STRIPS'') which stands for ''separate trading of registered interest and principal of securities.'' A stripped fixed income security, such as a Treasury Security or GSE Security, is a security that is separated into its periodic interest payments and principal repayment. The separate strips are then sold individually as zero coupon securities providing investors with a wide choice of alternative maturities.

[6] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (the ''19b–4(e) Order'')

[7] *See* Securities Exchange Act Release Nos. 49315 (February 24, 2004) 69 FR 9882 (March 2, 2004) (File No. SR–Amex–2004–08); 49136 (January 28, 2004), 69 FR 6345 (File No. SR–Amex–2003–99); 48791 (November 17, 2003), 68 FR 65750 (November 21, 2003) (File No. SR–Amex–2003–92); 47730 (April 24, 2003), 68 FR 23340 (May 1, 2003)

Continued

for Exchange trading, the Commission thoroughly considered the structure of these securities, their usefulness to investors and to the markets, and the Amex rules that govern their trading. Moreover, for each series of Trust Securities currently trading, the Exchange has separately filed a proposed rule change pursuant to Rule 19b–4. The Exchange believes that adopting generic listing standards for these securities and applying Rule 19b–4(e) should fulfill the intended objective of that rule by allowing those Trust Securities that satisfy the proposed generic listing standards to start trading, without the need for public notice and comment and Commission approval. This has the potential to reduce the time frame for bringing Trust Securities to market and thereby reducing the burdens on issuers, other market participants and the Commission.

Under Section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[8] The Amex is now proposing to amend Section 107 to add Section 107E to provide additional criteria for certain trust certificate securities that serve as pass-through vehicles for a portfolio of investment-grade fixed income and/or floating rate securities.[9]

The Trust Securities will conform to the initial listing guidelines under Section 107A [10] (except for the asset/equity requirements set forth in Section 107A(a)) and continued listing guidelines under Sections 1001–1003 [11] of the Company Guide. The Exchange believes, as set forth below, that the requirements of section 107A(a) of the Company Guide may be met by the issuer of each Underlying Security, rather than the Trust itself, due to the pass-through nature of the Trust Securities. The issuance of Trust Securities will generally consist of a repackaging of the Underlying Corporate Bonds. Other qualifying securities of the underlying portfolio may also consist of Treasury Securities and/or GSE Securities; [12] however, such securities will be limited to up to 15% of the underlying portfolio at the time of issuance.

The Trust is required to make distributions to holders of Trust Securities depending on the amount of distributions received by such Trust on the Underlying Securities. Due to the pass-through and passive nature of the Trust Securities, the Exchange will rely on the assets and stockholder equity of the issuers of the Underlying Bonds to meet the requirement in section 107A(a) of the Company Guide. In order for a Trust Security to be listed, the corporate issuers of the Underlying Bonds and the issuers of GSE Securities will meet or exceed the requirements of section 107A(a) of the Company Guide. In addition, Treasury Securities will rely on the fact that the issuer is the U.S. Government rather than the asset and stockholder tests found in section 107A(a).

The basket of Underlying Securities will not be managed and will generally remain static over the term of the Trust Securities. Underlying Securities will generally provide for the payment of interest which may be on a different schedule than the Trust Securities. To alleviate potential cash flow timing issues that may exist, the Trust may enter into an interest distribution agreement.[13] Principal distributions on the Trust Securities are expected to be made on dates that correspond to the maturity dates of the Underlying Securities. However, some of the Underlying Securities may have redemption provisions and in the event of an early redemption or other liquidation (*e.g.*, upon an event of default) of the Underlying Securities, the proceeds from such redemption (including any make-whole premium associated with such redemption) or liquidation will be distributed pro rata to the holders of the Trust Securities. Each Underlying Bond is expected to be issued by a corporate issuer and either purchased at the time of the initial issuance or in the secondary market. However, with respect to Treasury Securities and/or GSE Securities, the Trust will either purchase the securities directly from primary dealers or in the secondary market which consists of primary dealers, non-primary dealers, customers, financial institutions, non-financial institutions and individuals.

Holders of Trust Securities generally will receive interest on the face value in an amount to be determined at the time of issuance of the Trust Securities and disclosed to investors. The rate of interest payments will be based upon prevailing interest rates at the time of issuance and made to the extent received from the Underlying Securities. Distributions of interest may be made monthly, quarterly or semi-annually. Investors will also be entitled to be repaid the principal of their Trust Securities from the proceeds of the principal payments on the Underlying Securities.[14] The payout or return to

(File No. SR–Amex–2003–25); 47884 (May 16, 2003), 68 FR 28305 (May 23, 2003) (File No. SR–Amex–2003–37) and 48312 (August 8, 2003), 68 FR 48970 (August 15, 2003) (File No. SR–Amex–2003–69); 46835 (November 14, 2002), 67 FR 70271 (November 21, 2002) (File No. SR–Amex–2002–70); and 46923 (November 27, 2002), 67 FR 72247 (December 4, 2002) (File No. SR–Amex–2002–92). These products have been issued by Structured Obligations Corporation (''SOC''), a wholly-owned special purpose entity of J.P. Morgan Securities Holdings, Inc., and satisfy the requirements of asset-backed securities under the Securities Act. *See supra* Note 4.

[8] *See* Securities Exchange Act Release No. 27753 (March 1, 1990); 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[9] ''Investment grade'' is a current rating that is no lower than an S&P Corporation ''B'' rating or equivalent rating by another nationally recognized securities rating organization (''NRSRO'').

[10] The initial listing standards for the Trust Securities require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. However, if traded in thousand dollar denominations, then the minimum public distribution requirement of one (1) million units and the minimum requirement of 400 holders do not apply. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[11] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Trust Securities, the Exchange will rely on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[12] A GSE Security is a security that is issued by a government-sponsored entity such as Federal National Mortgage Association (''Fannie Mae''), Federal Home Loan Mortgage Corporation (''Freddie Mac''), Student Loan Marketing Association (''Sallie Mae''), the Federal Home Loan Banks and the Federal Farm Credit Banks. All GSE debt is sponsored but not guaranteed by the federal government, whereas government agencies such as Government National Mortgage Association (''Ginnie Mae'') are divisions of the U.S. government whose securities are backed by the full faith and credit of the U.S.

[13] In this manner, any shortfall in the amounts available to pay interest to holders of the Trust Securities due to varying interest payment schedules will be made to such Trust by a third party (typically a bank) and will be repaid out of future cash flow received by the Trust from the Underlying Securities.

[14] The Underlying Securities may drop out of the basket upon maturity or upon payment default or acceleration of the maturity date for any default other than payment default. The Prospectus for each Trust Security transaction will provide a schedule of the distribution of interest and of the principal upon maturity for each Underlying

investors on the Trust Securities will not be leveraged. The Trust Securities will mature on the latest maturity date of the Underlying Securities. Holders of the Trust Securities will have no direct ability to exercise any of the rights of a holder of an Underlying Bond; however, holders of the Trust Securities as a group will have the right to direct the Trust in its exercise of its rights as holder of the Underlying Securities. The Exchange currently lists and trades several Trust Securities under the names of ''Select Notes'' and ''TRACERS.'' [15] The Exchange, consistent with prior Commission approvals, proposes in these generic standards to provide for the listing and trading of the Trust Securities where the Underlying Securities meet the Exchange's Bond and Debenture Listing Standards set forth in Section 104 of the Company Guide.

The Exchange's Bond and Debenture Listing Standards in Section 104 of the Company Guide provide for the listing of individual bond or debenture issuances provided the issue has an aggregate market value or principal amount of at least $5 million and any of: (1) The issuer of the debt security has equity securities listed on the Exchange (or on the New York Stock Exchange, Inc. (''NYSE'') or on the Nasdaq National Market); (2) an issuer of equity securities listed on the Exchange (or on the NYSE or on the Nasdaq National Market) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; (3) an issuer of equity securities listed on the Exchange (or on the NYSE or on the Nasdaq National Market) has guaranteed the debt security; (4) an NRSRO has assigned a current rating to the debt security that is no lower than an Standard & Poor's Corporation (''S&P'') ''B'' rating or equivalent rating by another NRSRO; or (5) or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned (i) an investment grade rating to an immediately senior issue or (ii) a rating that is no lower than a S&P ''B'' rating or an equivalent rating by another NRSRO to a pari passu or junior issue.

In addition to the Exchange's Bond and Debenture Listing Standards, the Amex proposes that each Underlying Security must also be of investment grade quality as rated by a NRSRO and at least 75% of the underlying basket or portfolio contain Underlying Securities from issuances of $100 million or more. The maturity of each Underlying Security is expected to match the payment of principal of the Trust Securities with the maturity date of the Trust Securities being the latest maturity date of the Underlying Securities. Amortization of the Trust Securities will be based on (1) the respective maturities of the Underlying Securities, (2) principal payout amounts reflecting the pro-rata principal amount of maturing Underlying Securities and (3) any early redemption or liquidation of the Underlying Securities. Investors will be able to obtain the prices for the Underlying Securities through Bloomberg L.P. or other market vendors, including the broker-dealer through whom the investor purchased the Trust Securities. In addition, the Bond Market Association provides links to price and other bond information sources on its investor Web site at *http://www.investingbonds.com*. Transaction prices and volume data for the most actively-traded bonds on the exchanges are also published daily in newspapers and on a variety of financial websites. The National Association of Securities Dealers, Inc. (''NASD'') Trade Reporting and Compliance Engine (''TRACE'') will also aid investors in obtaining transaction information for most corporate debt securities, such as investment grade corporate bonds.[16] For a fee, investors can have access to intra-day bellwether quotes.[17]

Price and transaction information for Treasury Securities and GSE Securities may also be obtained at *http://www.publicdebt.treas.gov* and *http://www.govpx.com*, respectively. Price quotes are also available to investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Valuation prices[18] and analytical data may be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The Trust Securities generally will be listed in $1,000 denominations (or multiples thereof) with the Exchange's existing debt floor trading rules applying to trading. However, Trust Securities may be listed in face amounts in other than $1,000 denominations (or multiples thereof) whereby the Exchange's existing equity floor trading rules would apply. In all cases, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Trust Securities.[19] The Trust Securities will also be subject to the debt margin rules of the Exchange.[20] Finally, the Exchange will, in conjunction with the trading of Trust Securities, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Trust Securities and highlighting the special risks and characteristics of the Trust Securities. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Trust Securities: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Trust Securities. In addition, the Exchange also has a general policy that prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6 of the Act [21] in general and furthers the objectives of section 6(b)(5) [22] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

Security. In addition, such Prospectus will also disclose a description of payment default and acceleration of the maturity date.

[15] *See supra* note 4.

[16] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001). Investors are able to access TRACE information at *http://www.nasdbondinfo.com/*.

[17] Corporate prices are available at 20-minute intervals from Capital Management Services at *http://www.bondvu.com/*.

[18] ''Valuation Prices'' refer to an estimated price that has been determined based on an analytical evaluation of a bond in relation to similar bonds that have traded. Valuation prices are based on bond characteristics, market performance, changes in the level of interest rates, market expectations and other factors that influence a bond's value.

[19] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[20] See Amex Rule 462.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2004–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–Amex–2004–23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml).* 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 the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–23 and should be submitted on or before July 8, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13695 Filed 6–16–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49820; File No. SR–BSE–2004–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Boston Options Exchange Regulation By-Laws

June 7, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 18, 2004, the Boston Stock Exchange, Incorporated (''BSE'' 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 BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend certain sections of the Boston Options Exchange Regulation LLC By-Laws relating to the separation of duties between the BSE's Chairman and Chief Executive Officer. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rules of the Boston Stock Exchange

Boston Options Exchange Regulation LLC By-Laws

Secs. 1–2 no change

Sec. 3

Number of Directors

The Board shall consist of no fewer than seven nor more than thirteen Directors, the exact number to be determined by resolution adopted by the BSE Board from time to time. The BSE Board shall appoint directors to the BOXR Board, 50% of whom will serve until the first annual meeting of the BOXR Board, and 50% of whom will serve until the second consecutive annual meeting of the BOXR Board, in accordance with Section 5, below. In accordance with Section 4, below, the [Chief Executive Officer] *Chairman* of the BSE will be considered a member of the Board of Directors for voting purposes, but not for qualification percentage purposes. The General Counsel of the BSE will not be considered a member of the Board of Directors for voting purposes or qualification percentage purposes.

Sec. 4

Qualifications

Directors need not be Participants of BOX, or members of BSE. Industry Directors must be representatives of the securities industry as provided in Article II of the BSE Constitution. At least fifty percent (50%) of the Directors will be Public Directors. The Board shall include the [Chief Executive Officer] *Chairman* of the BSE, who will not be considered for the purposes of determining the qualification percentages for the Board set forth herein. The General Counsel of the BSE shall act as an advisor to the Board for all legal and regulatory matters, and shall not be a member or director of the Board. At least twenty percent (20%) of the Directors (but no fewer than two (2) Directors) will be officers or directors of a firm approved as a BOX Option Participant. An officer or director of a facility of the BSE may serve on the Board of Directors. The term of office of a Director shall not be affected by any decrease in the authorized number of Directors.

As soon as practicable, following the annual appointment of Directors, the Board shall elect from its members a Chair and Vice Chair and such other persons having such titles as it shall deem necessary or advisable to serve

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

until the next annual appointment or until their successors are chosen and qualify. The persons so elected shall have such powers and duties as may be determined from time to time by the Board. The Board, by resolution adopted by a majority of Directors then in office, may remove any such person from such position at any time.

Secs. 5–13 no change

Sec. 14

Committees

(a)–(c) no change.

(d) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware Law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of BOXR between meetings of the Board. The Executive Committee shall consist of five Directors, including at least two Public Directors, and at least one Options Participant Director. The [Chief Executive Officer] *Chairman* of the BSE shall be a member of the Executive Committee, and the General Counsel of the BSE will act in advisory role to the Executive Committee on legal and regulatory matters. Executive Committee members shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including at least fifty percent of the Public Directors and at least one Options Participant Director.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the rule change is to amend certain sections of the Boston Options Exchange Regulation LLC (''BOXR'') By-Laws concerning the position of the BSE Chief Executive Officer, in light of recent changes to the BSE Constitution providing for the separation of the Chairman and Chief Executive Officer roles.

On April 23, 2004, the Commission approved SR–BSE–2004–10, and Amendment No. 1 thereto.[3] That rule change permits the BSE Board of Governors to separate the positions of Exchange Chairman and Chief Executive Officer. The separation allows for the independence of the Exchange's regulatory function from its marketplace function. In particular, the Exchange's Constitution sets forth that the Chairman would, among other duties, be responsible for the management of the regulatory affairs of all exchange facilities, subsidiaries, or other legal entities to which the Exchange is a party. The Chief Executive Officer's duties would primarily be limited to responsibilities for the management and administration of the Exchange's marketplace functions, and would not include any involvement in the Exchange's regulatory affairs, including the regulatory affairs of any exchange facilities, subsidiaries, or other legal entities to which the Exchange is a party.

At the time the BOXR By-Laws were drafted, the Exchange's Chairman and Chief Regulatory Officer were the same person, as the Exchange's Constitution then mandated. Since the positions have since been separated, in accordance with recent BSE Constitutional changes, the Exchange is now seeking to replace ''Chief Executive Officer'' with ''Chairman'' in the BOXR By-Laws. This change would not only be consistent with the current changes to the BSE Constitution but with the purpose of BOXR, as a subsidiary of the Exchange responsible for regulatory oversight of the Boston Options Exchange, a facility of the BSE.

2. Statutory Basis

The statutory basis for the proposed rule change is the requirement under Section 6(b)(1) of the Act[4] that an exchange be organized and have the capacity to be able to carry out the purposes of the Act; the requirement under Section 6(b)(3)[5] that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs; and the requirement under Section 6(b)(5)[6] to have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

BSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change will become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act[7] and subparagraph (f)(1) of Rule 19b–4 under the Act because it constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule.[8] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2004–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary,

[3] *See* Securities Exchange Act Release No. 49611, 69 FR 23833 (April 30, 2004).

[4] 15 U.S.C. 78f(b)(1).

[5] 15 U.S.C. 78f(b)(3).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–BSE–2004–21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2004–21 and should be submitted on or before July 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13637 Filed 6–16–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49825; File No. SR–EMCC–2004–06]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify the Form and Substance of Opinions of Counsel

June 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 2, 2004, the Emerging Markets Clearing Corporation (''EMCC'') filed a proposed rule change with the Securities and Exchange Commission (''Commission'') and on June 4, 2004, amended its proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by EMCC. 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 will amend Rule 2 (''Members'') and Annexes 1 and 2 of Addendum D (''Opinion'') of EMCC's rules by clarifying the legal issues that the opinion of counsel that must be filed by EMCC applicants must address.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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. EMCC 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

Prior to this rule change, EMCC Rule 2, Section 2(b) required each applicant for EMCC membership to provide EMCC an opinion of counsel that was ''substantially to the effect of'' Annex 1 (for non-U.S. registered broker-dealers) or Annex 2 (for U.S. registered broker-dealers) of Addendum D of EMCC's rules. In each case, the opinion nevertheless had to be ''acceptable'' to EMCC.

Recently, there has been some question about whether EMCC's rule require an applicant to obtain an opinion of counsel ''in the form of'' as opposed to ''to the effect of'' the annexes to Addendum D. There has also been some question about whether an opinion must be ''clean'' or if it can have exceptions because the annexes do not clearly indicate whether an opinion may set forth a reservation or exception. To clarify this, EMCC is replacing each annex with a list of items that set forth the legal issues that an opinion must address. As a result, the annexes will not contain any opinion of counsel forms, which forms EMCC had only intended to be used as examples. Additionally, in its revisions to Addendum D, EMCC is making clear which items in the lists of legal issues to be addressed may contain exceptions, restrictions, or limitations.

Annex 1 will now provide that for non-U.S. applicants the opinion will be required to:

1. Address whether the applicant is duly organized, validly existing and in good standing and the jurisdiction in which this applies.
2. Address whether the applicant has full power and authority to enter into the agreements.
3. Confirm That the agreements are legal, binding and enforceable and specify the jurisdiction in which this applies or confirm that the courts in that jurisdiction would give effect to the choice of New York Law as the governing law and any exceptions that need to be noted.
4. Confirm that submission to the jurisdiction of the federal and state courts in New York is enforceable in the jurisdiction referenced in point 3 and any exceptions which must be noted.
5. Explain how netting and novation are treated in the jurisdiction referenced in point 3 and how this would impact the obligations of the applicant.
6. Explain the extent to which a court in the jurisdiction referenced in point 3 would apply New York law to perfected security interests under the agreements.
7. Explain how insolvency, liquidation or other similar actions affecting creditor's rights impact the obligations of the applicant.
8. Confirm that the agreements will not conflict with or be impeded by the laws or regulations issued in the jurisdiction referenced in point 3 or explain any exceptions to this statement.
9. Explain the degree to which EMCC may initiate an action against the applicant in the jurisdiction referenced in point 3 without having to first obtain a judgment against the applicant in the United States.
10. Explain whether there are any restrictions or limitations on the applicant's ability to provide information or documents that may be requested pursuant to EMCC's rules.
11. Confirm that no other authorizations or actions are required from any regulatory authority in connection with the execution, delivery and performance of the agreements or

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

specify those that are required to be obtained and the status of those actions.

Annex 2 will now provide that for domestic applicants the opinion will be required to:

1. Address whether the applicant is duly organized, validity existing and in good standing and the jurisdiction in which this applies.

2. Address whether the applicant has full power and authority to enter into the agreements.

3. Confirm that the execution, delivery and performance of the agreements are not in contravention of any authorizing document, rule or regulation or, to the extent that a blanket representation can not be given, an explanation of any limitations.

4. Confirm that no other authorizations or actions are required from any regulatory authority in connection with the execution, delivery and performance of the agreements or specify those that are required to be obtained and the status of those actions.

5. Indicate that the agreements are legal, valid, binding and enforceable obligations against the company and any exceptions that need to be noted.

All changes being made are to clarify or codify existing EMCC practices with respect to applicants' opinion of counsel. The rule will continue to provide that all opinions must still be acceptable to EMCC.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [3] and the rules and regulations thereunder, as the proposed rule change eliminates the confusion with respect to the form of the opinion of counsel that EMCC requires its applicants to submit.

B. Self-Regulatory Organization's Statement on Burden on Competition

EMCC 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

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [4] and Rule 19b–4(f)(1) [5] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EMCC–2004–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–EMCC–2004–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 also will be available for inspection and copying at the principal office of EMCC and on EMCC's Web site at *http://www.e-m-c-c.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMCC–2004–06 and should be submitted on or before July 8, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13634 Filed 6–16–04; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(f)(1).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49826; File No. SR–EMCC–2004–07]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Applicants' and Members' Financial Reporting Obligations

June 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 2, 2004, the Emerging Markets Clearing Corporation (''EMCC'') filed a proposed rule change with the Securities and Exchange Commission (''Commission'') as described in Items I, II, and III below, which Items have been prepared primarily by EMCC. 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 revises EMCC Rule 13 (''Financial Responsibility and Operational Capability'') to specifically set forth the types of financial materials that EMCC expects its members and applicants to submit to it.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning

[1] 15 U.S.C. 78s(b)(1).

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. EMCC 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

EMCC's Rule 13 provides that EMCC has the authority to examine the financial responsibility of any member or applicant to become a member. Rule 13 also provides that in conducting such examinations, EMCC may require a member or applicant to furnish such information to EMCC as EMCC deems necessary to evaluate the member's or applicant's financial and operational capability.

This proposed rule change formally memorializes EMCC's general practice of requesting applicants and members to provide, as applicable, FOCUS, Call, or SFA reports and returns on an ongoing basis. Accordingly, to ensure that its members are fully aware of the requirements imposed upon them, EMCC has determined to modify Rule 13 to specifically enumerate the types of documents that EMCC expects to receive from members and applicants. These documents include, but are not limited to:

(i) Financial statements, audited and unaudited;

(ii) FOCUS reports or FOGS reports (for U.S. registered broker-dealers) submitted to the designated examining authority and any supplemental reports required to be filed with the Commission pursuant to SEC Rule 17a–11 or 17 C.F.R. Section 405.3, or any successor rules or regulations thereto;

(iii) Call Reports (for U.S. banks) submitted to the appropriate regulatory agency and, to the extent not contained within such Call Reports (or to the extent that Call Reports are not required to be filed), information containing capital levels and ratios, as such levels and ratios are required to be provided to the appropriate regulatory agency; and

(iv) SFA monthly reports and returns (for non-U.S. registered broker-dealers subject to regulation by the SFA).

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder as the proposed rule change clarifies for its applicants and members EMCC's requirements with respect to provide financial materials to EMCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

EMCC 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

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[4] and Rule 19b-4(f)(1)[5] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR-EMCC–2004–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–EMCC–2004–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 also will be available for inspection and copying at EMCC's principal office and on EMCC's Web site at *http://www.e-m-c-c.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMCC–2004–07 and should be submitted on or before July 8, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13635 Filed 6–16–04; 8:45 am]

BILLING CODE 8010–01–P

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b-4(f)(1).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49827; File No. SR–ISE–2004–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc. To Extend a Pilot Program Under Which It Lists Options on Selected Stocks Trading Below $20 at One-Point Intervals Until August 5, 2004

June 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on June 4, 2004, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by ISE. 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

ISE proposes to extend its pilot program under which it lists options on selected stocks trading below $20 at $1 strike price intervals (''$1 Pilot Program'') until August 5, 2004. The text of the proposed rule change is available at the Office of the Secretary, ISE, and 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. 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

On June 16, 2003, the Commission approved the ISE's $1 Strike Pilot Program enabling it to list series with $1 strike price intervals on equity option classes that overlie up to five individual stocks, provided that the strike prices are $20 or less, but not less than $3.[3] Although ISE may select only up to five individual stocks to be included in the Pilot Program, ISE is also permitted to list options on other individual stocks at $1 strike price intervals if other options exchanges listed those series pursuant to their respective rules. ISE selected the following five options classes to participate in the Pilot Program: AMR Corp. [AMR], Calpine Corp. [CPN], EMC Corp. [EMC], El Paso Corp. [EP], and Sun Microsystems Inc. [SUNW]. The Pilot Program is set to expire on June 5, 2004.

The Pilot Program Approval Order requires ISE to provide the Commission with certain information and data covering the entire time the Pilot Program was in effect in the event ISE proposes to, among other things, extend the $1 Pilot Program beyond June 5, 2004.[4] ISE has conducted a study into the impact that $1 strikes have made on the participating $1 Pilot Program classes (''Pilot Program Report'') which provides certain data and written analysis relating to the five options classes the exchange selected to participate in the $1 Pilot Program. Generally, this data shows that there is meaningful trading volume and open interest in the $1 strikes, as compared to the non-$1 strikes in the same class. For example, an analysis of the trading in AMR options for the November 2003 series with the April 2004 series indicates that there is a growing interest by investors in the $1 Pilot Program. In AMR, for the November 2003 series, the collective open interest and trading volume among the $1 strikes (*e.g.*, $6, $9, $11 and $14) was 48,122 contracts and 8,872 contracts, respectively, compared to the collective open interest and trading volume among the non-$1 strikes (*e.g.*, $7.50, $10, $12.50 and $15) of 134,221 contracts and 23,259 contracts, respectively. For the April 2004 series, the collective open interest and trading volume among the $1 strikes, (*e.g.*, $11, $12, $13 and $14) was 36,882 contracts and 45,415 contracts, respectively, compared to the collective open interest and trading volume among the non-$1 strikes, (*e.g.*, $10 and $15) of 49,145 contracts and 9,860 contracts, respectively.

A similar analysis of the trading in CPN options for the October 2003 series with the March 2004 series further lends support for extending the $1 Pilot Program. For example, in CPN, for the October 2003 series, the collective open interest and trading volume among the $1 strikes (*e.g.*, $4, $6 and $9) was 22,855 contracts and 3,397 contracts, respectively, compared to the collective open interest and trading volume among the non-$1 strikes (*e.g.*, $5, $7.50 and $10) of 69,983 contracts and 13,686 contracts, respectively. For the March 2004 series, the collective open interest and trading volume among the $1 strikes (*e.g.*, $4, $6 and $7) was 54,853 contracts and 16,153 contracts, respectively, compared to the collective open interest and trading volume among the non-$1 strikes (*e.g.*, $5) of 16,441 contracts and 13,848 contracts, respectively. An analysis of the trading in the options for EMC, EP and SUNW revealed similar findings.

While the trading volume and open interest in the $1 strikes is not always as high as it is the non-$1 strikes, ISE believes that this can at least partially be attributed to the industry convention of $2.50 strikes in low priced stocks, and that, over time, this convention will break down and result in a more even distribution in volume and open interest in $1 strikes. ISE believes that this information and data demonstrates that the five classes it selected to participate were appropriate for the $1 Pilot Program. The underlying stocks are highly capitalized with low stock prices and generally in different industries, yet the $1 strike data appears relatively consistent across all five stocks. Moreover, ISE did not experience any capacity issues related to the $1 Pilot Program, nor does it believe there has been any negative impact on OPRA's capacity as a result of the $1 Pilot Program. In general, ISE states the $1 Pilot Program was well received by its Members, and ISE did not receive any complaints from Members or investors regarding the listing of $1 strikes.

ISE believes that this information and data shows that there is sufficient investor interest and demand to justify extending the $1 Pilot Program until August 5, 2004. ISE continues to believe that the $1 Pilot Program has provided investors with greater trading opportunities and flexibility. ISE further believes the $1 Pilot Program has provided investors with the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. ISE has not detected any material proliferation of illiquid options series resulting from the narrower strike price intervals.

2. Statutory Basis

ISE believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of section 6(b) of the Act.[5] Specifically, ISE believes the proposed rule change is consistent with requirements under Section 6(b)(5) of the Act[6] that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and

[3] *See* Securities Exchange Act Release No. 48033 (June 13, 2003), 68 FR 37036 (June 20, 2004) (''Pilot Program Approval Order'').

[4] ISE attached the Pilot Program Report as an exhibit to this proposed rule change. Copies of the Pilot Program Report are available at ISE and the Commission's Public Reference Room.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general, to protect investors and the public interest. ISE believes that extension of the $1 Pilot Program until August 5, 2004 will result in a continuing benefit to investors, by allowing them to more closely tailor their investment decisions, and will allow ISE to further study investor interest in $1 strike price intervals.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE has not received any unsolicited written comments from its members of other interested persons.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4[8] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and ISE has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b–4(f)(6)(iii) of the Act,[9] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and ISE is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. ISE has requested that the Commission waive 30-day operative delay so that the $1 Pilot Program may continue without interruption after it would have otherwise expired on June 5, 2004. For this reason, the Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative delay,[10] and, therefore, the proposal is effective and operative upon filing with the Commission.[11]

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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2004–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–ISE–2004–21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2004–21 and should be submitted on or before July 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13638 Filed 6–16–04; 8:45 am]

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[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For purposes only of waiving the 30-day operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] In its Pilot Program Approval Order, the Commission stated that if ISE proposed to (1) extend the $1 Pilot Program beyond June 5, 2004; (2) expand the number of options eligible for inclusion in the $1 Pilot Program; or (3) seek permanent approval of the $1 Pilot Program, the ISE would be required to submit a Pilot Program Report to the Commission along with the filing of such proposal. The Pilot Program Approval Order required the ISE to submit a proposed rule change with the Pilot Program Report at least 60 days prior to the expiration of the $1 Pilot Program. Because ISE failed to provide its Pilot Program Report to the Commission with sufficient time for the Commission staff to review the report, the Commission is extending the ISE's $1 Pilot Program only until August 5, 2004, to provide the Commission staff with time to review the ISE's Pilot Program Report.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49845; File No. SR–NASD–2003–69]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding Failure To Pay Arbitration Awards

June 10, 2004.

I. Introduction

On April 7, 2003, the National Association of Securities Dealers, Inc. (''NASD'') 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 (1) to amend Article V, Section 4 of the NASD By-Laws to permit NASD to suspend for failure to pay an arbitration award or settlement, for a period of two years after the award is entered, former associated persons who terminated their registration before the award was

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

entered; and (2) to amend Article VI, Section 3 of the NASD By-Laws to clarify that NASD may suspend the association, and not just the registration, of any person who fails to pay an arbitration award. Notice of the proposed rule change was published for comment in the **Federal Register** on May 7, 2004.[3] The Commission received one comment on the proposed rule change.[4] This order approves the proposed rule change.

II. Description of Proposed Rule Change

The proposed rule change amends Article V, Section 4 of the NASD By-Laws to provide that, for the limited purpose of instituting proceedings for failure to pay arbitration awards or settlements, NASD retains, for a period of two years after the entry of the award or settlement, jurisdiction to impose suspensions against former associated persons if the award or settlement resulted from a claim submitted for arbitration or mediation pursuant to the NASD Rules. The proposal addresses NASD's concern that a person associated with a member will terminate his or her association with the member once aware that an arbitration award may be entered against him or her in order to avoid sanction by NASD for failure to pay any award or settlement agreement resulting from the proceeding. In addition, the proposed rule change amends Article VI, Section 3 of the NASD By-Laws to clarify that NASD may suspend any person from associating with a member in any capacity for failure of such person to comply with an arbitration award or settlement.

III. Discussion

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 association.[5] Specifically, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[6] which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the amendments should improve NASD's ability to ensure that its membership is not likely to engage in conduct that may be harmful to public investors. The Commission notes that the proposed rule change strengthens NASD's ability to prevent persons who fail to honor securities-related arbitration awards from seeking to re-enter the securities business, and clarifies that persons who fail to honor such awards may be suspended from associating with NASD members in any capacity.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–NASD–2003–69) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13633 Filed 6–16–04; 8:45 am]

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[3] *See* Securities Exchange Act Release No. 49636 (April 30, 2004), 69 FR 25652 (''Notice'').

[4] *See* e-mail dated May 28, 2004 from Douglas K. Traynor. The e-mail did not raise any issues with respect to the substance of the proposed rule change.

[5] 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).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49833; File No. SR–NASD–2004–056]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Short-Sale ACT Reporting Requirements

June 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On May 21, 2004, Nasdaq filed Amendment No. 1 on behalf of the NASD.[3] Nasdaq has designated this proposal as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(1)[5] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing with the Commission a proposed rule change to clarify that members are required to indicate on their Automated Confirmation Transaction (''ACT'') Service reports whether a sale is a short sale or short sale exempt transaction for all securities, including exchange-listed, SmallCap, OTC Bulletin Board and OTC equity securities.

The text of the proposed rule change is below. Proposed new language is underlined.

* * * * *

IM 6130. Trade Reporting of Short Sales

The NASD's short sale rule (Short Sale Rule or Rule 3350) generally prohibits members from effecting short sales in NNM securities at or below the inside bid when the current inside bid is below the previous inside bid. Rule 6130(d)(6) requires that members indicate on ACT reports whether a transaction is a short sale or a short sale exempt transaction (''ACT short sale reporting requirements''). Rule 6130 explicitly requires members to file ACT reports not just for NNM securities transactions, but for other securities transactions, including transactions in exchange-listed, SmallCap, convertible debt, OTC Bulletin Board, and OTC equity securities. Thus, all short sale transactions in these securities reported to ACT must carry a ''short sale'' indicator (or a ''short sale exempt'' indicator if it is a short sale transaction in an NNM or exchange-listed security that qualifies for an exemption from Rule 3350 or SEC Rule 10a–1).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Mary M. Dunbar, Vice-President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated May 20, 2004 (''Amendment No. 1'').

[4] 15 U.S.C 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(1).

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1992, the NASD, believing that short sale regulation is important to the orderly operation of securities markets, proposed a short sale rule for trading of Nasdaq National Market (''NNM'') securities that incorporates the protections provided by Rule 10a–1 of the Act.[6] On June 29, 1994, the Commission approved the NASD's short sale rule applicable to short sales[7] in NNM securities on an eighteen-month pilot basis through March 5, 1996 (the ''Short Sale Rule'').[8] The NASD and the Commission have extended NASD Rule 3350 numerous times, most recently, until June 15, 2004.

As part of the Short Sale Rule, the NASD also amended NASD Rule 6130(d)(6) (previously ACT Rule (d)(4)(F)) to require that members include in ACT information regarding whether a sale is a short sale or short sale exempt (''short sale ACT reporting requirements''). Nasdaq believes that, because the Short Sale Rule applies only to NNM securities, and earlier guidance was issued relating specifically to short sale ACT reporting requirements for NNM securities,[9] some members may have been confused as to the types of securities that are subject to the short sale ACT reporting requirements. Through this filing, Nasdaq is clarifying that, as required by the text of the rule, the short sale ACT reporting requirements apply to transactions in all securities reported to ACT, including exchange-listed, SmallCap, OTC Bulletin Board and OTC equity securities. Nasdaq is submitting this filing to eliminate any ambiguity and make clear that members are required to annotate whether a sale is a short sale or short sale exempt, as applicable, pursuant to NASD Rule 6130(d)(4) for all ACT reports.

The proposed interpretation will become effective immediately upon filing, but Nasdaq will allow firms a 60-day period to re-program their systems to comply with the interpretation. Nasdaq believes that a 60-day period is necessary and reasonable in light of any confusion that may have existed to date. Within 10 days after filing this proposal, Nasdaq will publish a Notice to Members describing firms' obligations under IM 6130. The publication of that Notice to Members will trigger the start of the 60-day period.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(6)[10] of the Act, which requires, among other things, that a registered national securities association's rules be designed 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 mechanisms of a free and open market and a national market system, and to protect investors and the public interest. Nasdaq believes the proposed rule change is consistent with the Act in that it clarifies short sale reporting requirements and promotes compliance with and regulation of short sale requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i)[11] of the Act, and subparagraph (f)(1) of Rule 19b–4 thereunder,[12] because it is concerned solely with the interpretation of the meaning, administration or enforcement of an existing NASD rule.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2004–056 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–056. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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.,

[6] 17 CFR 240.10a–1.

[7] A short sale is a sale of a security that the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale, members must adhere to the definition of a ''short sale'' contained in Rule 3b–3 of the Act, which is incorporated into NASD's short sale rule by NASD Rule 3350(k)(1).

[8] *See* Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) (''Short Sale Rule Approval Order'').

[9] *See* ACT Notice 94–1 (August 22, 1994).

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C 78s(b)(3)(A)(i).

[12] 17 CFR 240.19b–4(f)(1).

[13] For purposes of determining the effective date of the filing and calculating the 60-day abrogation date, the Commission considers the period to commence on May 21, 2004, the date Nasdaq filed Amendment No. 1.

Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–056 and should be submitted on or before July 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13636 Filed 6–16–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49842: File No. SR–NASD–2004–071]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Regarding Improved Nasdaq Opening Process

June 9, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 23, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On May 27, 2004, Nasdaq amended 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

Nasdaq is filing the proposed rule change to improve the opening process for Nasdaq securities. There are four components of the proposal: (1) Modification of the pre-market hours trading environment for all Nasdaq securities, including the elimination of the Trade-or-Move process contained in Rule 4613(e) and the opening of quotations at 9:25 a.m. rather than 9:29:30 a.m.; (2) the creation of voluntary On Open, Imbalance Only, and Extended Hours order types (''Nasdaq Opening Orders'') and the application of new time-in-force rules for existing orders; (3) the creation of the Nasdaq Opening Cross; and (4) the creation of a Modified Opening Process for Nasdaq-listed securities that do not participate in the Nasdaq Opening Cross. The text of the proposed rule change is set forth below.[4] Proposed new language is in *italics;* deletions are in [brackets].[5]

* * * * *

4613. Character of Quotations

(a)–(d) No Change.

(e) Locked and Crossed Markets.

(1) A market maker shall not, except under extraordinary circumstances, enter or maintain quotations in Nasdaq during normal business hours if:

(A) No Change.

(B) No Change.

[(C) Obligations Regarding Locked/Crossed Market Conditions Prior to Market Opening.

(i) Locked/Crossed Market Prior to 9:20 a.m.—For locks/crosses that occur prior to 9:20 a.m. Eastern Time, a market maker that is a party to a lock/cross because the market maker either has entered a bid (ask) quotation that locks/crosses another market maker's quotation(s) or has had its quotation(s) locked/crossed by another market maker (''party to a lock/cross'') may, beginning at 9:20 a.m. Eastern Time, send a Directed Order of any size that is at the receiving market maker's quoted price (''Trade-or-Move Directed Order''). Exception: A market maker that is a party to a lock/cross may not send such an order to the SIZE MMID.

(ii) Locked/Crossed Market Between 9:20 and 9:29:29 a.m.—

a. Before an ECN enters a quote that would lock or cross the market between 9:20 and 9:29:59 a.m. Eastern Time, the ECN must first send a Trade-or-Move Directed Order to the market maker or ECN whose quote it would lock or cross that is at or superior to the receiving market maker's or ECN's quoted price. An ECN that sends a Trade-or-Move Directed Order during these periods must then wait at least 10 seconds before entering a quote that would lock or cross the market. Exception: An ECN is not required to send such an order to the SIZE MMID.

b. If a market maker enters a quote that would lock or cross the market between 9:20 and 9:29:29 a.m. Eastern Time, the market maker must then immediately send a Trade-or-Move Directed Order to the market maker or ECN whose quote it would lock or cross that is at or superior to the receiving market maker's or ECN's quoted price. Exception: A market maker is not required to send such an order to the SIZE MMID.

c. If any market participant enters a quote that would lock or cross the market between 9:29:30 and 9:29:59, that quote will be processed as set forth in Rule 4710(b)(3)(B).

(iii)

a. In the case of securities included in the Nasdaq 100 Index or the S&P 400 Index, a Trade-or-Move Directed Order must be at least 10,000 shares (if multiple market makers would be locked/crossed, each one must receive a Trade-or-Move Directed Order and the aggregate size of all such messages must be at least 10,000 shares); provided, however, that if a market participant is representing an agency order (as defined in subparagraph (vi) of this rule), the market participant shall be required to send a Trade-or-Move Directed Order(s) in an amount equal to the agency order, even if that order is less than 10,000 shares.

b. In the case of all other securities, a Trade-or-Move Directed Order must be for at least 5,000 shares (if multiple market makers would be locked/crossed, each one must receive a Trade-or-Move Directed Order and the aggregate size of all such orders must be at least 5,000 shares); provided, however, that if a market participant is representing an agency order (as defined in subparagraph (vi) of this rule), the market participant shall be required to send a Trade-or-Move Directed Order(s)

[14] 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 Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 26, 2004 (''Amendment No. 1''). In Amendment No. 1, Nasdaq restated the proposed rule change in its entirety.

[4] The Commission made the following corrections to the proposed rule text: (1) Internal cross references in proposed Rule 4704(a)(2)(a)(i) and (iii) were corrected; and (2) the title of Rule 4710 was corrected. Telephone conversation between Jeffrey S. Davis, Associate Vice President and Associate General Counsel, Nasdaq, and Ann E. Leddy, Special Counsel, Division, Commission (June 8, 2004).

[5] The proposed rule change is marked to show changes from the rule text appearing in the NASD Manual available at *www.nasd.com,* as amended by the following: SR–NASD–2003–149 (Securities Exchange Act Release No. 49349 (March 2, 2004), 69 FR 10775 (March 8, 2004)); SR–NASD–2004–046 (Securities Exchange Act Release No. 49547 (April 9, 2004), 69 FR 20091 (April 15, 2004)); SR–NASD–2004–064 (Securities Exchange Act Release No. 49650 (May 4, 2004), 69 FR 25941 (May 10, 2004)); SR–NASD–2004–051 (Securities Exchange Act Release No. 49597 (April 21, 2004), 69 FR 23244 (April 28, 2004)); and SR–NASD–2004–076 (filed on an immediately effective basis on May 5, 2004).

in an amount equal to the agency order, even if that order is less than 5,000 shares.

A market maker that receives a Trade-or-Move Directed Order must, within 10 seconds of receiving such message, either fill the incoming Trade-or-Move Directed Order for the full size of the message, or move its bid down (offer up) by a quotation increment that restores or maintains an unlocked/uncrossed market.

A market maker that sends a Trade-or-Move Directed Order pursuant to subparagraphs (e)(1)(C)(i) or (e)(1)(C)(ii)(b) of this rule, or an ECN that sends a Trade-or-Move Directed Order pursuant to subparagraph (e)(1)(C)(ii)(a) of this rule, must append to the message a Nasdaq-provided symbol indicating that it is a Trade-or-Move Message.

(vi) For the purposes of this rule ''agency order'' shall mean an order(s) that is for the benefit of the account of a natural person executing securities transactions with or through or receiving investment banking services from a broker/dealer, or for the benefit of an ''institutional account'' as defined in NASD Rule 3110. An agency order shall not include an order(s) that is for the benefit of a market maker in the security at issue, but shall include an order(s) that is for the benefit of a broker/dealer that is not a market maker in the security at issue.

(vii) The execution of a Trade or Move Directed Order that occurs at or after 9:29:30 may, upon the filing of a complaint by a member or UTP Exchange, be declared null and void in accordance with the procedures set forth in NASD Rule 11890.]

(2) No Change.

(3) [Except as indicated in subsection (1)(C)(ii), f]*F*or purposes of this rule, the term ''market maker'' shall include:

(A)–(D) No Change.

* * * * *

4701. Definitions

(a)–(rr) No Change.

(ss) The term ''Total Day'' *or ''X Order''* shall mean,

(a) [f]*F*or orders in ITS Securities so designated, that if after entry into the Nasdaq Market Center, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 6:30 p.m. and for potential execution between 9:30 a.m. and 6:30 p.m., after which it shall be returned to the entering party.

(b) For orders in Nasdaq-listed securities so designated, that if after entry into the Nasdaq Market Center, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 4 p.m. and for potential execution between 9:25 a.m. and 4 p.m., after which it shall be returned to the entering party.

(tt) No Change.

(uu) The term ''Total Immediate or Cancel'' *or ''IOX Order''* shall mean,

(*a*) [f]*F*or limit orders in ITS Securities so designated, that if after entry into the Nasdaq Market Center a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be cancelled and returned to the entering participant. Such orders may be entered between 7:30 a.m. and 6:30 p.m. and are available for potential execution between 9:30 a.m. and 6:30 p.m.

(b) For limit orders in Nasdaq-listed securities so designated, that if after entry into the Nasdaq Market Center a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be cancelled and returned to the entering participant. Such orders may be entered and are available for potential execution between 9:25 a.m. and 4 p.m.

* * * * *

4704. Opening Process for Nasdaq-Listed Securities

(a) Definitions. For the purposes of this rule the term:

(1) ''Imbalance'' shall mean the number of shares of buy or sell MOO, LOO or Early Regular Hours orders that may not be matched with other MOO, LOO, Early Regular Hours or OIO order shares at a particular price at any given time.

(2) The Order Imbalance Indicator shall disseminate three prices, defined as follows:

(a) ''Inside Match Price'' shall mean:

(i) The single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOO, LOO, OIO and Early Regular Hours orders can be paired.

(ii) If more than one price exists under subparagraph (i), the Inside Match Price shall mean the price that minimizes any Imbalance.

(iii) If more than one price exists under subparagraph (ii), the Inside Match Price shall mean the price that minimizes the distance from the previous Nasdaq official closing price.

(b)''Near Clearing Price'' shall mean the price at which both the MOO, LOO, OIO, and Early Regular Hours orders and all executable quotes and orders in the Nasdaq Market Center (excluding volume that is available only by order delivery) would execute.

(c)''Far Clearing Price'' shall mean the price at which the MOO, LOO, OIO, and Early Regular Hours orders in the Nasdaq Opening Book would execute.

(3)(a) ''Limit On Open Order'' or ''LOO'' shall mean an order to buy or sell at a specified price or better that is to be executed only during the Nasdaq Opening Cross. LOO orders shall execute only at the price determined by the Nasdaq Opening Cross and shall be available for automatic execution. LOO orders may be entered, cancelled and corrected between 7:30 a.m. and 9:28 a.m. without restriction.

(b) LOO orders entered after 9:28 a.m. shall be price validated as follows:

(i) In the case of a sell imbalance, sell orders shall be priced no lower than the Near Clearing Price or they shall be rejected. Buy orders shall be priced no higher than the Inside Match Price or they shall be rejected.

(ii) In the case of a buy imbalance, buy orders shall be priced no higher than the Near Clearing Price or they shall be rejected. Sell orders shall be priced no lower than the Inside Match Price or they shall be rejected.

(iii) If there is no imbalance, buy orders shall be priced no higher than the Inside Match Price and sell orders shall be priced no lower than the Inside Match Price or they shall be rejected.

(c) After 9:28 a.m., LOO orders may only be modified to improve their price or increase the number of shares available. Modifications to improve the price or number of shares of an existing LOO order shall pass the price validation in Rule 4704 (a)(2)(b) or the modification shall be rejected.

(d) LOO orders shall execute only at the price determined by the Nasdaq Opening Cross and shall be available for automatic execution.

(e) LOO orders may not be cancelled or corrected after 9:28. After 9:28 a.m., LOO orders may only be modified to improve their price or increase the number of shares available.

(4) ''Market on Open Order'' or ''MOO'' shall mean an order to buy or sell at the market that is to be executed only during the Nasdaq Opening Cross. MOO orders may be entered, cancelled, and corrected between 7:30 a.m. and 9:28 a.m. and shall execute only at the price determined by the Nasdaq Opening Cross. All MOO orders shall be available for automatic execution.

(5) ''Nasdaq Opening Cross'' shall mean the process for determining the price at which orders shall be executed at the open and for executing those orders.

(6) ''Opening Imbalance Only Order'' or ''OIO'' shall mean an order to buy or sell at a specified price or better that may be executed only during the Nasdaq Opening Cross and only against MOO, LOO or Regular Hours orders. OIO orders may be entered between 7:30 a.m. and 9:29:59 p.m., but they may not be cancelled or modified after 9:28 except to increase the number of shares or to increase (decrease) the buy (sell) limit price. OIO sell (buy) orders shall only execute at or above (below) the 9:30 Nasdaq Market Center offer (bid). All OIO orders shall be available for automatic execution.

(7) ''Order Imbalance Indicator'' shall mean a message disseminated by electronic means containing information about MOO, LOO, OIO, and Early Regular Hours orders and the price at which those orders would execute at the time of dissemination.

(8) ''Regular Hours Orders'' shall mean any order that may be entered into the system and designated with a time-in-force of IOC, DAY, or GTC. Regular Hours Orders shall be available for execution only during the opening and then during normal trading hours. Regular Hours Orders shall be designated as ''Early Regular Hours Orders'' if entered into the system prior to 9:28 a.m. and designated as ''Late Regular Hours Orders'' if entered into the system at 9:28 a.m. or after.

(b) Trading Prior To Normal Market Hours. The system shall open all eligible Quotes/Orders in Nasdaq-listed securities at 9:25 a.m. in the following manner to prevent the creation of locked/crossed markets.

(1) At 9:25, the system shall open all Quotes and limit priced X Orders in time priority. Quotes and X Orders whose limit price does not lock or cross the book shall be added to the book in strict time priority. Quotes and X Orders whose limit price would lock or cross the book shall be placed in an ''In Queue'' state.

(2) Next, the system shall begin processing the In Queue Quotes, IOX Orders, and X Orders in strict time priority against the best bid (ask) if the In Queue order is a sell (buy) order. If an In Queue Quote or X Order is not executable when it is next in time for execution, the system shall automatically add that Quote or X Order to the book.

(3) All Quotes and X Orders that are entered while the system is completing subparagraphs (1) and (2) shall be added to the In Queue file in strict time priority.

(4) Once the process set forth in subparagraphs (1)–(3) is complete, the system shall begin processing Quotes and X and IOX Orders in accordance with their entry parameters.

(5) All trades executed prior to 9:30 shall be automatically appended with the ''.T'' modifier.

(6) Notwithstanding subparagraphs (1) through (5), if a Nasdaq Quoting Market Participant has entered a Locking/Crossing Quote/Order into the system that would become subject to the automated processing described above, the system shall, before sending the order to any other Quoting Market Participant or Order Entry Firm, first attempt to match off the order against the locking/crossing Nasdaq Quoting Market Participant's own Quote/Order if that participant's Quote/Order is at the highest bid or lowest offer, as appropriate. A Nasdaq Quoting Market Participant may avoid this automatic matching through the use of anti-internalization qualifier as set forth in Rule 4710(b)(1)(B)(ii)(a). Order Entry Firms that enter locking/crossing Quotes/Orders shall have those Quotes/Orders processed as set forth in subparagraphs (1) through (4), unless they voluntarily select a ''Y'' AIQ Value as provided for in Rule 4710 (b)(1)(B)(ii)(a).

(c) Nasdaq-listed securities that are not designated by Nasdaq to participate in the Nasdaq Opening Cross shall begin trading at 9:30 a.m. in the following manner:

(1) At 9:30, the system shall suspend processing as set forth in paragraph (b) in order to open and integrate Regular Hours orders into the book in time priority.

(2) Limit priced Regular Hours Orders whose limit price does not lock or cross the book shall be added to the book in time priority and limit priced Regular Hours Orders whose limit price does lock or cross the book shall be held In Queue in time priority along with IOC and Regular Hours market orders.

(3) In Queue Orders shall then be executed in strict time priority against the best bid (ask) if the In Queue order is a buy (sell) order. Non-marketable IOC orders shall be cancelled and non-marketable Regular Hours Orders shall be added to the book.

(4) When all In Queue orders have been processed, the system shall resume processing for potential display in conformity with Rule 4707(b) and/or potential execution in conformity with Rule 4710(b)(1)(B).

(d) Processing of Nasdaq Opening Cross. For certain Nasdaq-listed securities designated by Nasdaq, the Nasdaq Opening Cross shall occur at 9:30, and regular hours trading shall commence when the Nasdaq Opening Cross concludes.

(1) Beginning at 9:28 a.m., Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 15 seconds until 9:29, and then every 5 seconds until market open. The Order Imbalance Indicator shall contain the following real time information:

(A) the Inside Match Price;

(B) the number of shares represented by MOO, LOO, OIO, and Early Regular Hours orders that are paired at the Inside Match Price;

(C) the size of any Imbalance;

(D) the buy/sell direction of any Imbalance; and

(E) indicative prices at which the Nasdaq Opening Cross would occur if the Nasdaq Opening Cross were to occur at that time and the percent by which the indicative prices are outside the then current Nasdaq Market Center best bid or best offer, whichever is closer. The indicative prices shall be:

(i) The Far Clearing Price, and

(ii) The Near Clearing Price.

(iii) If no price satisfies subparagraph (i) or (ii) above, Nasdaq shall disseminate an indicator for ''market buy'' or ''market sell''.

(2)(A) The Nasdaq Opening Cross shall occur at the price that maximizes the number of MOO, LOO, OIO, Early Regular Hours orders, and executable quotes and orders in the Nasdaq Market Center to be executed.

(B) If more than one price exists under subparagraph (A), the Nasdaq Opening Cross shall occur at the price that minimizes any Imbalance.

(C) If more than one price exists under subparagraph (B), the Nasdaq Opening Cross shall occur at the price that minimizes the distance from the previous Nasdaq official closing price.

(D) If the Nasdaq Opening Cross price established by subparagraphs (A) through (C) is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Opening Cross shall occur at a price within the threshold amounts that best satisfies the conditions of subparagraphs (A) through (C). Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.

(3) If the Nasdaq Opening Cross price is selected and fewer than all MOO, LOO, OIO and Regular Hours Orders that are available for automatic execution in the Nasdaq Market Center would be executed, all Quotes/Orders shall be executed at the Nasdaq Opening Cross price in the following priority:

(A) MOO and Early Regular Hours market orders, with time as the secondary priority;

(B) LOO orders, Early Regular Hours limit orders, OIO orders, X limit orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Opening Cross price with time as the secondary priority;

(C) LOO orders, OIO Orders, displayed interest of Early Regular Hours and X limit orders, and displayed interest of quotes at the Nasdaq Opening Cross price with time as the secondary priority;

(D) Reserve interest of quotes and Early Regular Hours and X limit orders at the Nasdaq Opening Cross price with time as the secondary priority; and

(E) Eligible Late Regular Hours orders in strict time priority.

Unexecuted MOO, LOO, and OIO orders shall be cancelled.

(4) All Quotes/Orders executed in the Nasdaq Opening Cross shall be executed at the Nasdaq Opening Cross price, trade reported with SIZE as the contra party, and disseminated via a national market system plan. The Nasdaq Opening Cross price shall be the Nasdaq Official Opening Price for stocks that participate in the Nasdaq Opening Cross.

* * * * *

4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by Nasdaq Market Center Participants:

(A) A Nasdaq Market Center Participant may enter into the Nasdaq Market Center a Non-Directed Order in order to access the best bid/best offer as displayed in Nasdaq.

(B) A Non-Directed Order must be a market or limit order, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and may be designated as ''Immediate or Cancel,'' ''Day,'' ''Good-till-Cancelled,'' ''Auto-Ex,'' ''Fill or Return,'' ''Pegged,'' ''Discretionary,'' ''Sweep,'' ''Total Day,'' ''Total Good till Cancelled,'' ''Total Immediate or Cancel,'' or ''Summary.''

(i)–(iii) No Change.

(iv) Starting at 7:30 a.m., until the 4 p.m. market close, IOC and Day Non-Directed Orders may be entered into the Nasdaq Market Center (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. GTC orders may be entered (or previously entered GTC orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time, but such orders entered prior to market open, or GTC orders carried over from previous trading days, will not become available for execution until 9:30 a.m. Eastern Time. [Exception: For Nasdaq listed securities only, Non-Directed Day (other than Pegged, Postable Auto-Ex, and Discretionary Orders) and GTC orders (other than Postable Auto-Ex Orders) may be executed prior to market open if required under Rule 4710(b)(3)(B).]

(v)–(xii) No Change.

(xiii) An order may be designated as ''Summary,'' in which case the order can be designated either as Day or GTC. A Summary Order that is marketable upon receipt by [NNMS] *the Nasdaq Market Center* shall be rejected and returned to the entering party. If not marketable upon receipt by [NNMS] *the Nasdaq Market Center*, it will be retained by [NNMS] *the Nasdaq Market Center*. [Summary Day and GTC orders shall be executed prior to the market open if required under Rule 4710(b)(3)(B).] Summary Orders may only be entered by [NNMS] Order-Delivery ECNs. Summary Orders may only be designated as Non-Attributable Orders.

(C) No Change.

(D) No Change.

(E) No Change.

(F) No Change.

(2) No Change.

(b)–(e) No Change.

* * * * *

Rule 4710. Participant Obligations in the Nasdaq Market Center

(a) No Change.

(b) Non-Directed Orders

(1)–(2) No Change.

(3) Entry of Locking/Crossing Quotes/Orders. The system shall process locking/crossing Quotes/Orders as follows:

(A) No Change.

[(B) Locked/Crossed Quotes/Orders Immediately Before the Open—If the market in a Nasdaq-listed security is locked or crossed at 9:29:30 a.m., Eastern Time, the Nasdaq Market Center will clear the locked and/or crossed Quotes/Order by executing (or delivering for execution) the highest bid against the lowest offer(s) against which it is marketable, at the price of the newer in time of the two quotes/orders. This process will be repeated until an un-locked and un-crossed market condition is achieved. Between 9:29:30 a.m. and 9:29:59 Eastern Time, once the Nasdaq Market Center has cleared a locked or crossed market, or if a newly submitted quote/order would create a locked or crossed market, the Nasdaq Market Center will prevent a locked or crossed market from being created by processing such locking or crossing quote/order in a manner consistent with subparagraph (b)(3)(a) of this Rule.

(i) Exception—The following exception shall apply to the above locked/crossed processing parameters:

If a Nasdaq Quoting Market Participant has entered a Locking/Crossing Quote/Order into the system that would become subject to the automated processing described in section (B) above, the system shall, before sending the order to any other Quoting Market Participant or Order Entry Firm, first attempt to match off the order against the locking/crossing Nasdaq Quoting Market Participant's own Quote/Order if that participant's Quote/Order is at the highest bid or lowest offer, as appropriate. A Nasdaq Quoting Market Participant may avoid this automatic matching through the use of anti-internalization qualifier as set forth in Rule 4710(b)(1)(B)(ii)(a). Order Entry Firms that enter locking/crossing Quotes/Orders shall have those Quotes/Orders processed as set forth in paragraph (B) above, unless they voluntarily select a ''Y'' AIQ Value as provided for in Rule 4710 (b)(1)(B)(ii)(a).]

[(C)] *(B)* Locked/Crossed Quotes/Orders in ITS Securities at the Open—If the market in an ITS Security is locked or crossed at 9:30 a.m., Eastern Time, the Nasdaq Market Center will clear the locked and/or crossed Quotes/Order by executing (or delivering for execution) the highest bid against the lowest offer(s) against which it is marketable, at the price of the newer in time of the two quotes/orders. This process will be repeated until an un-locked and un-crossed market condition is achieved. While the Nasdaq Market Center is clearing a locked or crossed market, if a newly submitted Quote/Order would create a locked or crossed market, the Nasdaq Market Center will prevent a locked or crossed market from being created by holding such Quotes/Orders in queue.

(i) Exception—The following exception shall apply to the above locked/crossed processing parameters: If an ITS/CAES Market Maker has entered a Locking/Crossing Quote/Order into the system that would become subject to the automated processing described in [section (C)] *subparagraph (B)* above, the system shall, before sending the order to any other ITS/CAES Market Maker or Order Entry Firm, first attempt to match off the order against the locking/crossing ITS/CAES Market Maker's own Quote/Order if that participant's Quote/Order is at the highest bid or lowest offer, as appropriate. An ITS/CAES Market Maker may avoid this automatic matching through the use of anti-internalization qualifier as set forth in

Rule 4710(b)(1)(B)(ii)(a). Order Entry Firms that enter locking/crossing Quotes/Orders shall have those Quotes/Orders processed as set forth in *sub*paragraph (B) above, unless they voluntarily select a ''Y'' AIQ Value as provided for in Rule 4710(b)(1)(B)(ii)(a).

(4)–(8) No Change.

(c)–(e) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to improve the pre-open trading environment for Nasdaq-listed securities, and to create two new voluntary opening processes that would together constitute the beginning of the trading day for all Nasdaq-listed securities. The changes to the pre-open environment would eliminate Trade-or-Move, open all market participant quotes at 9:25 a.m., and create new extended hours order types for trading in a firm quote environment beginning at 9:25 a.m. The new 9:30 a.m. opening processes would take one of two forms: the Modified Nasdaq Opening or the Nasdaq Opening Cross. According to Nasdaq, the Modified Nasdaq Opening would integrate quotes and orders entered during pre-market hours with orders designated for execution during the normal trading day (9:30 a.m. to 4 p.m.), create an unlocked inside bid and offer in the Nasdaq Market Center, and facilitate an orderly process for opening trading at 9:30 a.m. For certain stocks designated by Nasdaq, the Opening Cross would include the creation of On Open and Extended Hours order types including Market-on-Open (''MOO''), Limit-on-Open (''LOO''), and Opening Imbalance Only (''OIO'') orders, an opening order imbalance indicator to be disseminated via a Nasdaq data feed, and a single-price opening cross that would execute eligible orders at 9:30 a.m. According to Nasdaq, the proposal is designed to create a more robust opening that allows for price discovery, and executions that result in an accurate, tradable opening price.

The Modified Pre-Open Trading Environment

In response to industry demand for improvements to the pre-market trading session, Nasdaq would modify the pre-opening trading environment for all Nasdaq-listed stocks, to improve price discovery, permit executions, and minimize the creation and duration of locked and crossed markets leading into the open of the normal trading day. The modified pre-opening environment would have three components: (1) Elimination of Trade-or-Move; (2) creation of pre-opening eligible orders; and (3) opening quotations and pre-opening eligible orders at 9:25 a.m. rather than 9:29:30. This modified pre-opening process would apply to all Nasdaq-listed securities, including those that will not participate in the Opening Cross.

Eliminating Trade-or-Move. The first element of the modified opening environment would be the elimination of the Trade-or-Move process currently set forth in Rule 4613(e)(1)(C). Since its adoption, the Trade-or-Move process has reduced the instances and duration of locked and crossed markets prior to the market open and generally improved the quality of the opening. It is, however, widely regarded as overly complex with respect to programming, administration, and compliance. In addition, the utility of Trade-or-Move has diminished since Nasdaq implemented an automated unlocking and uncrossing process in the Nasdaq Market Center. Because that automated process ensures an unlocked market at or shortly after 9:29:30, the primary function of Trade-or-Move has been reduced to maintaining unlocked markets prior to 9:29:30 when market participants' quotes are still closed. As described in more detail below, Nasdaq believes that moving the unlocking process from 9:29:30 to 9:25 and opening quotations at that time would capture all of the benefits that Trade-or-Move currently offers and improve upon them.

New Extended Hours Order Types. Nasdaq would create two new order types for Nasdaq-listed securities: the Extended Hours Day Order (''X Order'') and the Extended Hours Immediate or Cancel (''IOX'').[6] Members would be able to enter X Orders beginning at 7:30 a.m. on either an attributable or a non-attributable basis. X Orders would be available for execution beginning at 9:25 and continuing until the end of that trading day, currently 4:00:00 p.m. If not executed by that time, X Orders would be cancelled automatically from the system and returned to the entering party.

IOX Orders would function much as Immediate or Cancel (''IOC'') Orders currently function. An IOX Order would be required to be priced and if after entry into the Nasdaq Market Center it were to become non-marketable, the unexecuted portion would be cancelled and returned to the entering party. IOX Orders would only be available for entry and execution between 9:25 a.m. and 4 p.m.

Nasdaq would also modify the time-in-force for Day, IOC, and Good-till-Cancel (''GTC'') orders. Today those order types are eligible to participate in the 9:29:30 process for clearing locks and crosses. Nasdaq is proposing to modify those order types to make them ineligible for pre-opening processing. Those orders would still be available for entry at 7:30 but would not be available for execution until 9:30.

Set forth below is a description of how the X and IOX Orders and quotes would function in the new pre-open trading environment.

The ''Wake Up'' Process. As stated above, to preserve and enhance the price discovery process that currently occurs prior to market open, Nasdaq proposes to open all quotes and pre-opening eligible orders at 9:25, making those quotes and orders available for execution. Nasdaq currently employs a similar process, set forth in Rule 4710(b)(3), at 9:29:30 to clear locked or crossed markets remaining at the end of the Trade-or-Move period, and to maintain those markets as unlocked and uncrossed until market open at 9:30. Nasdaq proposes to begin that process at 9:25:00 and to change that process slightly with the same goal of maintaining unlocked and uncrossed markets until the market open at 9:30.

The Nasdaq Market Center would use the following process to ''wake up'' market participant quotes and X and IOX Orders. All market participant quotes would be woken up in accordance with each firm's instructions to the Nasdaq Market Center. All quotations would be carried over from the previous trading day and, firms would have several options for how

[6] These order types, referred to as Total Day and Total Immediate or Cancel, exist for use in trading ITS Securities. *See* NASD Rule 4701(ss) and (uu). They operate under different order entry time parameters for trading ITS Securities.

their carryover quotes are opened at 9:25. First, if the quote is not modified between 7:30 a.m. and 9:25 a.m., the quote would be able to be opened at the last quotation price entered during the previous day. Second, if the firm's quote is modified between 7:30 a.m. and 9:25 a.m., that quote would be able to be opened at the price of the last price change entered after 7:30 a.m. Third, Nasdaq would add a feature that would allow the firm automatically to set the firm's bid and ask at the quote limits for Nasdaq, currently $.01 (bid) and $2,000 (ask).

All quotes and limit price X Orders would wake up at 9:25:00. Any order or quote whose limit price does not lock or cross the book would be added to the book in strict time priority. Orders or quotes whose limit price would lock or cross the book would be placed in an ''In Queue'' state also in time priority. Upon completion of the wake-up process, within seconds after 9:25, the Nasdaq Market Center would begin executing quotes and X Orders that were held In Queue in strict time priority regardless of quote or order type. X orders that are not executable would be added to the book. In Queue quotes and orders that are not executable would be added to the book. All quotes and X or IOX Orders entered while the system is waking up and sorting to clear locks and crosses, would be suspended. Once this process is complete, the system would resume processing the input queue of quotes, X and IOX Orders as needed to maintain an unlocked market.

All trades executed prior to 9:30 would be considered as executed outside of regular trading hours and would be appended automatically with the ''.T'' modifier, as they are today between 9:29:30 and 9:30.

The Nasdaq Opening Cross

Certain Nasdaq-listed stocks would be designated to participate in the Nasdaq Opening Cross, which Nasdaq represents it has designed to complement the recently implemented Nasdaq Closing Cross. There would be three components of the Nasdaq Opening Cross: (1) The creation of On Open and Imbalance Only order types; (2) the dissemination of an order imbalance indicator via a Nasdaq proprietary data feed; and (3) opening cross processing in the Nasdaq Market Center at 9:30 that would execute the maximum number of shares at a single, representative price that would be the Nasdaq Official Opening Price. Each component is described in detail below.

On Open and Opening Imbalance Only Order Types. The new opening cross would begin with market participants entering On Open and Opening Imbalance Only order types in the Nasdaq Market Center. These orders would only be accepted for stocks eligible for participation in the Opening Cross process. Opening Orders would be required to be available for automatic execution but all firms, both automatic execution and order delivery participants would be able to enter them into the Nasdaq Market Center. The On Open Orders would not be displayed in the quotation montage or disseminated via any Nasdaq data feeds. On Open orders would only execute at the price determined by the opening Nasdaq cross.

On Open orders would be able to be un-priced and entered as MOO, or priced and entered as LOO. MOO orders would be able to be entered, cancelled, and corrected anytime between 7:30 a.m., when the system would open, until 9:28:00 a.m., when Nasdaq would begin disseminating the opening order imbalance indicator. LOO orders would be able to be entered from 7:30:00 until 9:29:59. LOO orders would be subject to price improvement if the buy (sell) order were to be greater than (less than) the opening price. A LOO order at the opening price would not be filled if there were to be insufficient shares available on the opposite side of the market to fill the LOO order.

To reduce price volatility in the Opening Cross, LOO orders submitted after 9:28:00 a.m. would be treated differently than those submitted before 9:28:00. LOO orders entered prior to 9:28:00 would be able to have any limit price and would be able to be cancelled anytime prior to 9:28:00 a.m. Late LOO Orders would be able to be submitted only within a specified price range based on the last calculated Nasdaq Order Imbalance Indicator. Late LOO Orders submitted outside the prescribed price range would be rejected. If there were to be a sell imbalance, Late LOO Orders to sell would be required to be priced no lower than the ''near clearing price'' (described below) or they would be rejected. Late LOO Orders to buy would be required to be priced no higher than the ''inside match price'' (also described below) or they would be rejected. If there were to be a buy imbalance, Late LOO Orders to buy would be required to be priced no higher than the near clearing price and Late LOO Orders to sell would be required to be priced no lower than the inside match price or they would be rejected. Finally, if there were to be no imbalance, Late LOO Orders to buy would be required to be priced no higher than the inside match price and Late LOO Orders to sell would be required to be priced no lower than the inside match price or they would be rejected. Late LOO orders would not be able to be cancelled at any time for any reason, although their price would be able to be improved or their share size increased.

In order to add sufficient liquidity to the market at and prior to the open, Nasdaq would enable market participants to enter OIO orders. OIO orders would be required to be priced as limit orders and would not be displayed or disseminated. These orders would provide supplemental liquidity and would execute only on the opening cross against any imbalance, similar to imbalance only orders on the closing cross. OIO orders priced more aggressively than the Nasdaq Market Center Inside ask (bid) before the open would be re-priced to the ask (bid) both for the purposes of the imbalance dissemination message and for executing on the opening cross. In this regard, they would allow market participants to add liquidity to the market and help to ensure the execution of MOO and marketable LOO orders. OIO orders would be able to be entered beginning at 7:30 a.m. until immediately before the market open. The entering firm would not be able to cancel these orders after a predetermined time, currently planned for 9:28:00. Imbalance orders would be able to be improved after the cancellation threshold and if improved would receive a new timestamp.

Additional Opening-Eligible Quotes/Orders. In addition to MOO, LOO, and OIO Orders, the Opening Cross would include: (1) Market participant quotations, both displayed and reserve size; (2) orders entered with a time-in-force of Day, GTC or IOC prior to 9:28:00 (collectively ''Early Regular Hours Orders''), which would fully participate in the Opening Cross; (3) Day, GTC, and IOC orders entered after 9:28:00 (collectively ''Late Regular Hours Orders''), which would participate in the Opening Cross only to the extent that there were to be available liquidity on the other side at the Crossing Price; and (4) Extended Hours Orders. Additionally, after 9:28, all requests to cancel and cancel/replace Regular Hours Orders would be suspended. If those orders were to not be executed during the Opening Cross, the requests for cancellation would be processed.

Nasdaq Order Imbalance Indicator (''NOII''). At 9:28 a.m. Nasdaq would begin disseminating an opening order imbalance indicator on one or more Nasdaq proprietary data feeds. Although the Opening Cross would occur at 9:30,

the order imbalance indicator would be disseminated to give participants insight into the state of the book and the opening cross if it were to take place at that time. This message would add transparency to the market and encourage market participants to add liquidity to the market prior to the open.

Similar to the closing order imbalance indicator, the opening imbalance information would include several pieces of information regarding the cross: (1) The Inside Match Price, which would be designed to maximize the number of paired shares of MOO, LOO, OIO and Early Regular Hours orders and minimize any imbalance and divergence from the previous official closing price; (2) the number of shares represented by MOO, LOO, OIO and Early Regular Hours orders paired at the Inside Match Price; (3) the MOO, LOO, and Early Regular Hours orders imbalance at the Inside Match Price; (4) the buy/sell direction of that imbalance at the Inside Match Price; (5) an indicative clearing price range at which the Nasdaq Opening Cross would occur if the Nasdaq Opening Cross were to occur at that time; and (6) the percent by which that indicative price would vary from the Inside Match Price. The indicative clearing price range would be bounded on the far side by the price at which all MOO, LOO, OIO, and Early Regular Hours orders would cross with only each other. It would be bounded on the near side by the price at which the MOO, LOO, OIO Early Regular Hours orders, Extended Hours Orders and Quotes would clear. Where no clearing price would exist, Nasdaq would disseminate an indicator for ''market buy'' or ''market sell.''

Nasdaq would disseminate the NOII via Nasdaq proprietary data feeds at no additional charge to subscribers. The indicator would be disseminated beginning at 9:28:00 and then at more frequent intervals as the time to market open decreases: every 15 seconds beginning at 9:28 and every 5 seconds beginning at 9:29 until market open.

For example, if the Nasdaq Market Center Opening Book were to contain the following orders:

BUY ORDERS

Entry Time	Type	Size	Price
9:24:00	IOC	8000	Market
9:24:00	OO	1000	19.99
8:40:00	OO	4000	19.97
9:22:00	IO	500	19.97
9:22:00	Quote	2000	19.97

SELL ORDERS

Entry Time	Type	Size	Price
8:29:00	OO	1000	19.99
9:18:00	Quote	5000	20.01
8:40:00	OO	1000	20.02
8:30:00	Quote	10000	20.04

The NOII information disseminated would be: 1,000 shares paired, 7,000 share buy imbalance at $20.01.

Indicative Prices: MKT BUY far clearing price, $20.04 near clearing price.

Similarly, if the Nasdaq Market Center were to contain the following orders:

BUY ORDERS

Entry Time	Type	Size	Price
9:24:00	IOC	8000	Market
9:28:20	OO	5000	20.04
9:24:00	OO	1000	19.99
8:40:00	OO	4000	19.97
9:22:00	IO	500	19.97
9:22:00	Quote	2000	19.97

SELL ORDERS

Entry Time	Type	Size	Price
8:29:00	OO	1000	19.99
9:18:00	Quote	5000	20.01
8:40:00	OO	1000	20.02
8:30:00	Quote	10000	20.04
9:28:10	OO	10000	20.05

The NOII information disseminated would be: 1,000 shares paired, 12,000 share buy imbalance at $20.01.

Indicative Prices: 20.05 far clearing price, $20.04 near clearing price.

Nasdaq Opening Cross. The Nasdaq Opening Cross, like the Closing Cross, would be designed to accomplish three goals in decreasing priority: (1) Maximize the MOO, LOO, OIO, and Early Regular Hours orders and

executable quotes and orders in the Nasdaq Market Center to be executed; (2) minimize the Imbalance of such shares; and (3) minimize the distance from the previous Nasdaq official closing price. In other words, Nasdaq's matching engine would algorithmically evaluate all eligible prices at which an Opening Cross would be able to occur and identify the price or prices at which the maximum shares would be executed. If more than one price would result in the same number of shares being executed, the matching engine would evaluate those prices only and determine which price would minimize the imbalance of on open orders. If more than one price would still qualify, the matching engine would identify the single price that would minimize the distance from a crossing price to the previous Nasdaq official closing price.

If the Nasdaq Opening Cross price were to be selected and fewer than all quotes and orders that are available for automatic execution in the Nasdaq Market Center would be executed, the system would execute quotes and orders in the following priority:

(A) MOO and Early Regular Hours market orders, with time as the secondary priority;

(B) LOO orders, Early Regular Hours limit orders, OIO orders, X limit orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Opening Cross price with time as the secondary priority;

(C) LOO orders, OIO orders, displayed interest of Early Regular Hours and X limit orders, displayed interest of limit orders, and displayed interest of quotes at the Nasdaq Opening Cross price with time as the secondary priority;

(D) Reserve interest of quotes and Early Regular Hours and X limit orders at the Nasdaq Opening Cross price with time as the secondary priority;

(E) Late Regular Hours orders in strict time priority; and

(F) Unexecuted MOO, LOO, and OIO orders would be cancelled.

The Opening Cross would occur at 9:30. All orders that are executable would be executed at the Nasdaq Opening Cross price, reported to Nasdaq's trade reporting system with SIZE as the contra party on both sides of the trade, and then transmitted to the consolidated tape. The Nasdaq Opening Cross price and the associated paired volume would then be disseminated via the UTP Trade Data Feed (''UTDF'') as a bulk print and on the Nasdaq Index Dissemination Service (''NIDS'') and the Nasdaq Application Program Interface as the Nasdaq Official Opening Price (''NOOP'').

While the Opening Cross occurs, all entry of quotes and orders would be suspended. When the Opening Cross concludes, normal trading would commence just as it does today.

To illustrate the Opening Cross, if the Nasdaq Market Center were to contain the following orders at 9:30:

BUY ORDERS

Entry time	Type	Size	Price
9:24:00	IOC	8000	Market
9:28:20	OO	5000	20.04
9:29:57	Quote	5000	20.03
9:24:00	OO	1000	19.99
8:40:00	OO	4000	19.97
9:22:00	OIO	500	19.97
9:22:00	Quote	2000	19.97

SELL ORDERS

Entry time	Type	Size	Price
8:29:00	OO	1000	19.99
9:29:54	OO	20000	19.99
9:29:58	OO	10000	19.99
8:40:00	OO	1000	20.02
8:30:00	Quote	10000	20.04
9:28:10	OO	10000	20.05

The Opening Cross would occur at $19.99 with 19,000 shares crossed. The inside market after the cross would be 19.97 by 20.04.

Opening Cross Circuit Breaker. As it did with the Nasdaq Closing Cross, Nasdaq would establish a circuit breaker for the Opening Cross to protect against unusual occurrences where the price discovery mechanism at the open did not function as expected. Nasdaq has selected as a benchmark values representing market conditions approximately five seconds prior to the open the Volume Weighted Average Price (''VWAP'') based upon the Nasdaq Market Center executions over the period from 9:29:55 to 9:30.[7] After the selection of the Opening Cross price but before execution, Nasdaq would compare the selected price to the benchmark. If the expected Opening Cross price would be within a preset boundary of the VWAP, the cross would occur at the expected Opening Cross price.

If the expected Opening Cross price would be outside a preset boundary (''Threshold Percentage'') of the benchmark, Nasdaq would change the Opening Cross price such that it is within the threshold percentage. This change would happen automatically prior to execution of the Opening Cross, and would not involve any human intervention. The modified price would then follow the principles for ordinary crosses: Maximizing volume executed, minimizing the imbalance of On Open orders, and minimizing the distance from the previous Nasdaq official closing price. All unexecuted shares from On Open orders would be cancelled.

The Threshold Percentage would be set by Nasdaq officials in advance and communicated to members. Nasdaq would be able to adjust the Threshold Percentage based on Nasdaq's

[7] If there are no transactions from which to calculate a VWAP, Nasdaq will use the 9:30 SuprerMontage bid-ask midpoint to determine the circuit breaker.

experience with the Opening Cross and on unusual market conditions, such as certain options and derivatives expiration days that are heavily affected by the opening price of Nasdaq securities. The threshold would be set so the use of the bounds is very rare. Such changes would occur in advance and would be communicated to members. Nasdaq would publish the Threshold Percentages via its public NasdaqTrader Web site.[8]

Modified Opening Process

Not all Nasdaq securities would participate in the Nasdaq Opening Cross. For those that do not, Nasdaq has developed an improved procedure to ensure that all stocks open with an unlocked inside market. Like the process that Nasdaq applies today at 9:29:30 to clear locks and crosses, the improved process would ''wake up'' orders that are eligible for execution beginning at 9:30, and process them in an orderly fashion to prevent the creation of locks and crosses.

The process would have several steps, each of which occur in strict time priority. First, limit orders that have a time-in-force of Day or GTC would wake-up. Of those, orders whose limit price would not lock or cross the book would be added to the book. Orders whose limit price would lock or cross the book would be placed in an ''In Queue'' state in strict time priority. Second, reverse Pegged orders would wake up. If the price created by the reverse Pegged order would not lock or cross the book, the order would be placed on the book. If the price created by the reverse Pegged order would lock or cross the book, the order would be placed in ''In Queue'' status. Third, regular Pegged orders would wake up in strict time priority. Since these orders can only join the current highest bid or lowest offer price level, they would simply add depth to the book at that price. The In Queue orders also would include market and IOC orders in strict time priority. At this point, all eligible orders that would not lock or cross the market would be on the Nasdaq Market Center book and all other eligible orders would be In Queue.

After the wake-up process has been completed, the system would process the ''In Queue'' orders, including market orders, in strict time priority order regardless of order type. IOC orders that would not be executable would be cancelled as is currently done. Orders with a time in force of DAY and GTC that would not be executable would be added to the book in strict time priority. Once this process is complete, the system would resume processing the input queue as normal.

Implementation. Upon initial implementation, Nasdaq plans to apply the opening cross process to securities included in the Nasdaq 100 Index, the S&P 500 Index, and the Nasdaq Biotech Index. Nasdaq would have the authority to apply the Opening Cross to any and all Nasdaq NMS securities. For those securities, the Nasdaq Opening Cross price would be the NOOP. Issues that are not subject to the Opening Cross would be subject to the Modified Opening Process, and would continue to have their NOOP value calculated and disseminated as today.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of section 15A of the Act,[9] in general, and with section 15A(b)(6) of the Act,[10] in particular, in that section 15A(b)(6) requires the NASD's rules to be designed, among other things, to protect investors and the public interest. Nasdaq believes that its current proposal is consistent with the NASD's obligations under these provisions of the Act because it would result in the public dissemination of information that more accurately reflects the trading in a particular security at the open. Furthermore, to the extent a security is a component of an index, Nasdaq believes the index would more accurately reflect the value of the market, or segment of the market, the index is designed to measure. Nasdaq believes the corresponding result should be trades, or other actions, executed at prices more reflective of the current market when the price of an execution, or other action, is based on the last sale, the high price or low price of a security, or the value of an index.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2004–071 on the subject line.

Paper Comments

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–071. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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

[8] Nasdaq may also employ the Benchmark Value and Threshold Percentages for determining the Nasdaq Official Opening Price for stocks that are not included in the Nasdaq Opening Cross.

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(6).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–071 and should be submitted on or before July 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13639 Filed 6–16–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49844; File No. SR–NASD–2004–021]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Reporting of Cancelled Trades

June 10, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 4, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On May 19, 2004, Nasdaq filed an amendment to the proposed rule change.[3] 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 the Substance of the Proposed Rule Change Regarding Reporting of Cancelled Trades

Nasdaq proposes to require members to report the cancellation of any trades previously submitted to the Nasdaq Market Center. The text of the proposed rule change is below. Proposed new language is *italicized*.[4]

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4630. Reporting Transactions in Nasdaq National Market Securities

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4632. Transaction Reporting

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(g) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 5430(b) for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 5430(b) to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2).

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation within 90 seconds of the decision to cancel the trade.

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which a decision to cancel is made prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (g)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which the decision to cancel occurs after 6:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following day by 6:30 p.m.

(F) For any trade for which the decision to cancel occurs on any date after the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation (i) if the decision to cancel occurs before 6:30 p.m., then by 6:30 p.m. on the date when the decision to cancel occurs, or (ii) if the decision to cancel occurs at or after 6:30 p.m., then by 6:30 p.m. on the following day.

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4640. Reporting Transactions in Nasdaq SmallCapSM Market Securities

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4642. Transaction Reporting

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(g) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 5430(b) for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 5430(b) to report the trade (but for the trade being reported automatically by

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[11] 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 Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Commission, dated May 18, 2004 (''Amendment No. 1''). Amendment No. 1 replaced Nasdaq's February 4, 2004 filing in its entirety. Amendment No. 1 is incorporated into this notice.

[4] The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at www.nasd.com, and also reflects a proposal to rename the Automated Confirmation Transaction Service to the Nasdaq Market Center as contained in proposed rule change filing SR–NASD–2004–076.

the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2).

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation within 90 seconds of the decision to cancel the trade.

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which a decision to cancel is made prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (g)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which the decision to cancel occurs after 6:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following day by 6:30 p.m.

(F) For any trade for which the decision to cancel occurs on any date after the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation (i) if the decision to cancel occurs before 6:30 p.m., then by 6:30 p.m. on the date when the decision to cancel occurs, or (ii) if the decision to cancel occurs at or after 6:30 p.m., then by 6:30 p.m. on the following day.

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4650. Reporting Transactions in Nasdaq Convertible Debt Securities

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4652. Transaction Reporting

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(g) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 5430(b) for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 5430(b) to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2).

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation within 90 seconds of the decision to cancel the trade.

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which a decision to cancel is made prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (g)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which the decision to cancel occurs after 6:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following day by 6:30 p.m.

(F) For any trade for which the decision to cancel occurs on any date after the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation (i) if the decision to cancel occurs before 6:30 p.m., then by 6:30 p.m. on the date when the decision to cancel occurs, or (ii) if the decision to cancel occurs at or after 6:30 p.m., then by 6:30 p.m. on the following day.

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6100. Trade Reporting Service

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6130. Trade Report Input

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(f) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rules 5430, 6420, or 6620 for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 5430, 6420, or 6620 to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

(2) Deadlines for Reporting Cancelled Trades

Members shall comply with deadlines established in Rules 4632, 4642, 4652, 6420, and 6620 for reporting cancelled trades.

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6420. Transaction Reporting

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(f) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 6420 for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that

would have been required by Rule 6420 to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation within 90 seconds of the decision to cancel the trade.

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:15 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which a decision to cancel is made prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (f)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which the decision to cancel occurs after 6:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following day by 6:30 p.m.

(F) For any trade for which the decision to cancel occurs on any date after the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation (i) if the decision to cancel occurs before 6:30 p.m., then by 6:30 p.m. on the date when the decision to cancel occurs, or (ii) if the decision to cancel occurs at or after 6:30 p.m., then by 6:30 p.m. on the following day.

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6600. REPORTING TRANSACTIONS IN OVER-THE-COUNTER EQUITY SECURITIES

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6620. Transaction Reporting

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(f) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trade

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 6620 for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 6620 to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation within 90 seconds of the decision to cancel the trade.

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:15 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which a decision to cancel is made prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (f)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which the decision to cancel occurs after 6:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following day by 6:30 p.m.

(F) For any trade for which the decision to cancel occurs on any date after the date of execution, the memeber responsible under paragraph (f)(1) shall report the cancellation (i) if the decision to cancel occurs before 6:30 p.m., then by 6:30 p.m. on the date when the decision to cancel occurs, or (ii) if the decision to cancel occurs at or after 6:30 p.m., then by 6:30 p.m. on the following day.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A.Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Market participants make trading and investment decisions based in part on information disseminated by Nasdaq about trades executed in its market. To improve the quality of this information, Nasdaq is proposing to require members to report the cancellation of any trades previously submitted to the Nasdaq Market Center.

Specifically, Nasdaq is proposing to require members to notify Nasdaq, through a submission, when they cancel a trade previously reported to Nasdaq.[5] The member that originally had the obligation to report the trade also will have the responsibility to report the cancellation of the trade.[6] Nasdaq proposes to set different deadlines—5:15 p.m. same day, 6:30 p.m. same day, or 6:30 p.m. of the next trading day—depending on when the original trade is executed and when the decision to cancel occurs. The 5:15 p.m. deadline corresponds to the final dissemination of market pricing information for trades executed during normal market hours (9:30 a.m.–4 p.m.), such as high/low/last sale and Nasdaq Official Closing Price (''NOCP'') values. The 6:30 p.m.

[5] Members will not be required to submit a cancellation report if Nasdaq cancels a trade using its authority under NASD Rule 11890. In such situations, Nasdaq submits the cancellation report.

[6] For cancelled trades executed through the Nasdaq Market Center execution service, which automatically submits trade reports, the member that would have been responsible for submitting the original report (but for the system reporting the trade) will be responsible for initiating the cancellation. For example, when trade executed between two market makers in the Nasdaq Market Center execution service is subsequently cancelled, the sell side member is responsible for initiating the cancellation.

deadline corresponds to the final dissemination of volume totals, and the close of the Nasdaq Securities Information Processor and the Nasdaq trade reporting system.

There are four possible scenarios. First, for a trade executed during normal market hours that is reported as cancelled prior to 5:15 p.m. on the same day the trade occurred, the cancellation could impact high/low/last sale values and possibly NOCP values. So that Nasdaq can quickly and accurately reflect the cancellation, Nasdaq proposes a 90 second reporting obligation (with best efforts to report cancellations that occur after 5:13:30 p.m. and before 5:15 p.m.).

Second, for a trade executed during normal market hours that is cancelled after 5:15 p.m. on the same day the trade occurred, the cancellation is to be reported by 6:30 p.m. on the following trading day. The trading community and investing public require finalized pricing information (*i.e.*, high/low/last and closing prices) at a time reasonably related to the 4 p.m. close of regular market-hours trading. Allowing a firm to submit a cancelled report of a market hours trade after 5:15 p.m. on trade date would require Nasdaq to adjust its prices up until this new time, a departure from long-standing industry practices and inconsistent with the 5:15 p.m. deadline for reporting a market-hours trade.[7] Next day reporting of the cancellation adequately corrects the regulatory audit trail, but does not impact the previous day's reported price information.

Third, for a trade executed outside of normal market hours that is cancelled prior to 6:30 p.m. on the day of the trade, the cancellation is to be reported prior to the close of Nasdaq's reporting system at 6:30 p.m. The 6:30 p.m. time is consistent with the report time for trades executed outside of normal market hours. Trades that occur outside of normal market hours (*i.e.*, .T trades) do not impact high/low/last sale or NOCP values, but do impact volume. If, however, the trade is cancelled after 6:30 p.m. on the day of the trade, the cancellation is to be reported by 6:30 p.m. on the next following day.

Fourth, for any trade, whether a normal market hours trade or a .T trade, cancelled after 6:30 p.m. or on a day subsequent to the day the trade occurred, there is no impact to high/low/last sale, NOCP values or volume. Since the only correction made is to the audit trail, these cancellations are to be reported either by 6:30 p.m. on the day in which the decision to cancel is made, provided the decision to cancel occurs before 6:30 p.m., or the next following day if the decision occurs after 6:30 p.m. Nasdaq will issue additional guidance informing members of any technical requirements for reporting the cancellation of a trade, as appropriate.

This reporting requirement will improve the accuracy of the information disseminated by Nasdaq. Today, members are not required to notify Nasdaq when the parties agree to cancel a trade. The lack of a reporting obligation creates a problem when the original trade, now cancelled, has already been reported to Nasdaq, included in the high and low price calculations for the security, and disseminated to market participants. During its routine surveillance, Nasdaq has found that in some situations cancelled trades have set a new high or low price for a security; Nasdaq believes a cancelled trade should not set these values. When Nasdaq discovers this situation, it removes the cancelled trade from the high and low price calculations and corrects its audit trail. However, Nasdaq cannot take these remedial measures if it does not know that a trade has been cancelled. Nasdaq's proposal will provide it the requisite notice so that it can take any actions necessary to correct the information disseminated and to correct its audit trail.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] in general, and with Section 15A(b)(6) of the Act,[9] 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 to protect investors and the public interest. The proposed rule change will improve the quality of information disseminated by Nasdaq about the prices at which stocks are trading in its market.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2004–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–021. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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

[7] The deadline for the cancellation of these trades to affect volume is set at 5:15 p.m. to remain consistent with the 5:15 p.m. deadline for dissemination of high/low/last and NOCP that also applies to these trades.

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(6).

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 also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–021 and should be submitted on or before July 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13640 Filed 6–16–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49849; File No. SR–NYSE–2004–22]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading of Equity Gold Shares

June 10, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 7, 2004, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the NYSE.

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 NYSE proposes to list and trade Equity Gold Shares (''Shares''), which represent units of fractional undivided beneficial interest in and ownership of the Equity Gold Trust℠ (''Trust'').

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, and 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 set forth below. Proposed new language is in *italics.*

* * * * *

NYSE Constitution and Rules

Rule 1300

Equity Gold Shares

(a) *The provisions of this Rule 1300 series apply only to Equity Gold Shares, which represent units of fractional undivided beneficial interest in and ownership of the Equity Gold Trust.℠ While Equity Gold Shares are not technically Investment Company Units and thus are not covered by Rule 1100, all other rules that reference ''Investment Company Units,'' as defined and used in Para. 703.16 of the Listed Company Manual, including, but not limited to Rules 13, 36.30, 98, 104, 460.10, 1002, and 1005 shall also apply to Equity Gold Shares.*

(b) *As is the case with Investment Company Units, paragraph (m) of the Guidelines to Rule 105 shall also apply to Equity Gold Shares. Specifically, Rule 105(m) shall be deemed to prohibit an equity specialist, his member organization, other member, allied member or approved person in such member organization or officer or employee thereof from acting as a market maker or functioning in any capacity involving market-making responsibilities in physical gold, gold futures or options on gold futures, or any other gold derivatives. However, an approved person of an equity specialist entitled to an exemption from Rule 105(m) under Rule 98 may act in a market making capacity, other than as a specialist in the Equity Gold Shares on another market center, in physical gold, gold futures or options on gold futures, or any other gold derivatives.*

(c) *Except to the extent that specific provisions in this Rule govern, or unless the context otherwise requires, the provisions of the Constitution, all other Exchange Rules and policies shall be applicable to the trading of Equity Gold Shares on the Exchange. Pursuant to Exchange Rule 3 (''Security''), Equity Gold Shares are included within the definition of ''security'' or ''securities'' as those terms are used in the Constitution and Rules of the Exchange.*

Rule 1301

Equity Gold Shares: Securities Accounts and Orders of Specialists

(a) *The member organization acting as specialist in Equity Gold Shares is obligated to conduct all trading in the Shares in its specialist account, subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange. (See Rules 104.12 and 104.13.) In addition, the member organization acting as specialist in Equity Gold Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading physical gold, gold futures or options on gold futures, or any other gold derivatives, which the member organization acting as specialist may have or over which it may exercise investment discretion. No member organization acting as specialist in Equity Gold Shares shall trade in physical gold, gold futures or options on gold futures, or any other gold derivatives, in an account in which a member organization acting as specialist, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required hereby.*

(b) *In addition to the existing obligations under Exchange rules regarding the production of books and records (see, e.g., Rule 476(a)(11)), the member organization acting as specialist in Equity Gold Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any member, allied member, approved person, registered or non-registered employee affiliated with such entity for its or their own accounts in physical gold, gold futures or options on gold futures, or any other gold derivatives, as may be requested by the Exchange.*

(c) *In connection with trading physical gold, gold futures or options on gold futures or any other gold derivative (including Equity Gold Shares), the specialist registered as such in Equity Gold Shares shall not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in physical gold, gold futures or options on*

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

gold futures, or any other gold derivatives.

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A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade Shares which represent units of fractional undivided beneficial interest in and ownership of the Trust.[3] World Gold Trust Services, LLC, a wholly owned limited liability company of the World Gold Council,[4] is the sponsor of the Trust (''Sponsor''). The Bank of New York is the trustee of the Trust (''Trustee''), and HSBC Bank USA, an indirect wholly owned subsidiary of HSBC Holdings plc, is the custodian of the Trust (''Custodian''). UBS Securities LLC is to be the initial purchaser of the Shares (''Initial Purchaser''), as described below. The Sponsor, Trustee, Custodian and Initial Purchaser are not affiliated with one another or with the Exchange.

Gold Supply and Demand [5]

The Exchange has provided the following description of the commodity underlying the Equity Gold Shares. According to the Registration Statement, gold is a physical asset that is accumulated, rather than consumed. As a result, virtually all of the gold that has ever been mined still exists today in one form or another. The Registration Statement notes that, at the end of 2002, there was an estimated 147,800 metric tonnes (approximately 4.8 billion ounces) of above-ground stocks of gold. Of this amount, approximately 47% is held as a store of value or monetary assets; much of the gold in this category exists in bullion form and in theory could be mobilized and made available to the market. Approximately 51% is held as a raw material or commodity and would need to be remelted and transformed into bullion bars before being mobilized into the market in an acceptable form. The remaining 2% is unaccounted.

Sources of gold supply include both mine production and the recycling or mobilizing of existing above-ground stocks. The largest portion of gold supplied into the market annually is from gold mine production.[6] The second largest source of annual gold supply is from old scrap, which is gold that has been recovered from jewelry and other fabricated products and converted back into marketable gold. Additionally, since 1989, official sector sales have outstripped purchases, creating an additional net supply of gold into the marketplace. Net producer hedging, which accelerates the timing of the sale of physical gold, can also impact (positively or negatively) supply in a given year, though such hedging transactions do not involve a net increase in the supply of gold to the market.

According to the Registration Statement, published statistics indicate that the demand for gold amounted to less than 3.0% of total above ground stocks in 2002. Demand for gold is driven primarily by demand for jewelry and, in much of the developing world, also as an investment. Gold demand is widely dispersed throughout virtually all countries in the world. While there are seasonal fluctuations in the levels of demand for gold (especially jewelry) in many countries, the Exchange notes that, according to the Registration Statement, variations in the timing of such fluctuations in different countries mean that seasonal changes in demand do not have a significant impact on the global gold price.

Description of the Gold Market

The Exchange has provided the following description of the gold market. The global trade in gold consists of over-the-counter (''OTC'') transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options.

The OTC Market

The OTC market trades on a 24-hour per day continuous basis and accounts for most global gold trading. Liquidity in the OTC market can vary from time to time during the course of the 24-hour trading day. Fluctuations in liquidity are reflected in adjustments to dealing spreads—the differential between a dealer's ''buy'' and ''sell'' prices. According to the Registration Statement, the period of greatest liquidity in the gold market is typically that time of the day when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in London, New York and other centers coincides with futures and options trading on the COMEX division of the New York Mercantile Exchange (''NYMEX''). This period lasts for approximately four hours each New York business day morning.

Market makers, as well as others in the OTC market, trade with each other and with their clients on a principal-to-principal basis. All risks and issues of credit are between the parties directly involved in the transaction. Market makers include the market-making members of the London Bullion Market Association (''LBMA''), the trade association that acts as the coordinator for activities conducted on behalf of its members and other participants in the London bullion market.[7] The current market-making members of the LBMA are: Barclays Bank Plc, Deutsche Bank AG, HSBC Bank USA (London branch), J. Aron and Company (UK) (a division of Goldman Sachs), JPMorganChase Bank, ScotiaMocatta, Société Générale, and UBS AG. HSBC Bank USA (London branch) is an affiliate of the Custodian. UBS AG is an affiliate of the Initial Purchaser. The OTC market provides a relatively flexible market in terms of quotes, price, size, destinations for delivery, and other factors. Bullion dealers customize transactions to meet clients' requirements. The OTC market has no formal structure and no open-outcry meeting place.

The main centers of the OTC market are London, New York, and Zurich. Bullion dealers have offices around the world, and most of the world's major bullion dealers are either members or associate members of the LBMA. Of the eight market-making members of the LBMA, five offer clearing services. There are currently a further 52 full

[3] Equity Gold Trust is a service mark of World Gold Trust Services, LLC.

[4] The World Gold Council is a not-for-profit association registered under Swiss law.

[5] The Sponsor, on behalf of the Trust, filed Amendment No. 2 to Form S–1 (the ''Registration Statement'') on November 24, 2003. *See* Registration No. 333–105202. Except as otherwise specifically noted, the Exchange states that the information provided in this Rule 19b–4 filing relating to the Shares, gold, the gold market, movements in the price of gold and the like is based entirely on information included in the Registration Statement and the Trading Practices Letter (defined below).

[6] Mine production is derived from more than 900 separate operations on all continents of the world, except Antarctica. According to the Registration Statement, any disruption to production in one locality is unlikely to affect a significant number of these operations simultaneously. The Registration Statement asserts that such potential disruption is unlikely to have a material impact on the overall level of global mine production, and therefore equally unlikely to have a noticeable impact on the gold price. In the unlikely event of significant disruptions to production occurring simultaneously at a large number of individual mines, the Exchange notes that, according to the Registration Statement, any impact on the price of gold would likely be short-lived.

[7] Further information about the LBMA may be found at *http://www.lbma.org.uk.* The Exchange updated this information on June 9, 2004. Telephone conference between James F. Duffy, Senior Vice President, Associate General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission, on June 9, 2004 (confirming to Commission staff that there are currently eight market-making members of the LBMA, five of which offer clearing services, and a further 52 full members).

members, plus a number of associate members around the world.

According to the Registration Statement, in the OTC market, the standard size of gold trades between market makers ranges between 5,000 and 10,000 troy[8] ounces. Bid-offer spreads are typically U.S. $0.50 per ounce. Dealers are willing to offer clients competitive prices for much larger volumes, potentially up to 100,000 troy ounces, although this will vary according to the dealer, the client and market conditions, as transaction costs in the OTC market are negotiable between the parties and therefore vary widely. Cost indicators can be obtained from various information service providers as well as dealers.

The Exchange states that there are no authoritative published figures for overall world-wide volume in gold trading. There are certain published sources that do suggest the significant size of the overall market. The LBMA publishes statistics compiled from the five members offering clearing services.[9] The Exchange notes that the monthly average daily volume figures published by the LBMA for 2003 range from a high of 19 million to a low of 13.6 million troy ounces per day. The Exchange also notes that the COMEX publishes price and volume statistics for transactions in contracts for the future delivery of gold. COMEX figures for 2003 indicate that the average daily volume for gold futures contracts was 4.9 million troy ounces per day.[10]

The London Bullion Market and the London ''Fix'' Process

Although the market for physical gold is distributed globally, the Exchange states that most OTC market trades are cleared through London. In addition to coordinating market activities, the Exchange notes that the LBMA acts as the principal point of contact between the market and its regulators. A primary function of the LBMA is its involvement in the promotion of refining standards by maintenance of the ''London Good Delivery Lists,'' which are the lists of LBMA accredited melters and assayers of gold. The LBMA also coordinates market clearing and vaulting, promotes good trading practices, and develops standard documentation. The LBMA also publishes ''The Good Delivery Rules for Gold and Silver Bars,'' the specifications for gold and silver bars acceptable for delivery in settlement of a transaction on the London market. Gold bars meeting these requirements are referred to herein as ''London Good Delivery Bars.'' The gold spot price always refers to that of a London Good Delivery Bar, unless otherwise specified. The Exchange states that business is generally conducted over the phone and through a widely used electronic dealing system.

Twice daily during London trading hours, there is a ''fix'' which provides reference gold prices for that day's trading.[11] The Exchange notes that many long-term contracts will be priced on the basis of either the morning (AM) or afternoon (PM) London fix, and market participants will usually refer to one or the other of these prices when looking for a basis for valuations. According to the Registration Statement, the London fix is the most widely used benchmark for daily gold prices and is quoted by various financial information sources.

Futures Exchanges

The Exchange states that the most significant gold futures exchanges are the COMEX division of the NYMEX and the Tokyo Commodity Exchange (''TOCOM'').[12] Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. Trading costs are negotiable. According to the Registration Statement, as a matter of practice, only a small percentage of the futures market turnover ever comes to physical delivery of the gold represented by the contracts traded. Both exchanges permit trading on margin. COMEX operates through a central clearance system. TOCOM has a similar clearance system. In each case, the exchange acts as a counterparty for each member for clearing purposes.

Gold Market Regulation

The Exchange states that global gold market participants are overseen and regulated by both governmental and self-regulatory organizations. In addition, the Exchange states that certain trade associations have established rules and protocols for market practices and participants. In the United Kingdom, responsibility for the regulation of the financial market participants, including the major participating members of the LBMA, falls under the authority of the Financial Services Authority (''FSA'') as provided by the Financial Services and Markets Act 2000 (''FSM Act''). Under the FSM Act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls. The Exchange states that the FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial

[8] Telephone conference between James F. Duffy, Senior Vice President, Associate General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission, on June 9, 2004 (confirming to Commission staff that the standardized measurement used by markets around the world is troy ounces).

[9] Information regarding clearing volume estimates by the LBMA can be found at *http://www.lbma.org.uk/clearing_table.htm.* The three measures published by LBMA are: Volume, the amount of metal transferred on average each day measured in million of troy ounces; value, measured in U.S. dollars, using the monthly average London PM fixing price; and the number of transfers, which is the average number recorded each day. The statistics exclude allocated and unallocated balance transfers where the sole purpose is for overnight credit and physical movements arranged by clearing members in locations other than London.

[10] Information regarding average daily volume estimates by the COMEX (a division of NYMEX) can be found at *http://www.nymex.com/jsp/markets/md_annual_volume6.jsp#2.* The statistics are based on gold futures contracts, each of which relates to 100 troy ounces of gold.

[11] The Exchange states that formal participation in the London fix is traditionally limited to five LBMA members, each of which is a bullion dealer. N M Rothschild & Sons Limited withdrew in April 2004 after acting as chairman since the inception of the fix more than 80 years ago. This prompted some changes in the process with effect from May 2004. The chairmanship will rotate annually among the five members. Under this new arrangement, Scotiabank, through its precious metals division ScotiaMocatta, assumed the chairmanship on May 5, 2004, for a period of 12 months. With effect from the same date, the fix has taken place by telephone, and the five members no longer meet face-to-face as was previously the case. As part of this change, it is intended that a web-based commentary of the fix will be introduced later this year. The morning session of the fix starts at 10:30 AM London time, and the afternoon session starts as 3 PM London time. The other members of the gold fixing are currently Deutsche Bank AG, HSBC Bank USA, Société Générale, Barclays Capital. The last-named bought the Rothschild seat for an undisclosed sum. HSBC Bank USA acts as Custodian for the Trust. Any other market participant wishing to participate in trading on the fix is required to do so through one of these five dealers. Clients place orders either with one of the five fixing members or with another bullion dealer who will then be in contact with a fixing member during the fixing. The fixing members net-off all orders when communicating their net interest at the fixing. The fix begins with the fixing chairman suggesting a ''trying price,'' reflecting the market price prevailing at the opening of the fix. This is relayed by the fixing members to their dealing rooms that have direct communication with all interested parties. Any market participant may enter the fixing process at any time, or adjust or withdraw his order. The gold price is adjusted up or down until all the buy and sell orders are matched, at which time the price is declared fixed. All fixing orders are transacted on the basis of this fixed price, which is instantly relayed to the market through various media. According to the Registration Statement, the London fix is widely viewed as a full and fair representation of all market interest at the time of the fix.

[12] The Exchange notes that there are other gold exchange markets, such as the Istanbul Gold Exchange, the Shanghai Gold Exchange, and the Hong Kong Chinese Gold & Silver Exchange Society.

forwards, and deposits of gold and silver not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England, and is a voluntary code of conduct among market participants.[13]

The Exchange states that participants in the United States OTC market for gold are generally regulated by the market regulators, which regulate their activities in the other markets in which they operate. For example, participating banks are regulated by the banking authorities. In the United States, the Commodity Futures Trading Commission, an independent government agency with the mandate to regulate commodity futures and option markets in the United States, regulates market participants and has established rules designed to prevent market manipulation, abusive trade practices, and fraud.

The Exchange states that TOCOM has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor the price movements of futures markets by comparing them with cash and other derivative markets' prices.

Investing in Gold

Below, the Exchange discusses the reasons it believes investors would be attracted to investing in gold. According to the Registration Statement, gold's ability to serve as a portfolio diversifier is due to its historically low-to-negative correlation with stocks and bonds. The economic forces that determine the price of gold are different from the forces that determine the prices of most financial assets. For example, the price of a stock often depends on the earnings or growth potential of the issuing company or the confidence investors have in its management. The price of a bond depends primarily on its credit rating, its yield, and the yields of competing fixed income investments. The Exchange states that the price of gold, however, depends on different factors, including the supply and demand for gold, the strength or weakness of the United States dollar, the rate of inflation and interest rates, and the current political environment. The Exchange also notes that gold does not depend on a promise to pay on the part of any government or corporation, as is the case with investments in money market instruments as well as the corporate and government bond markets. Gold is not directly affected by the economic policies of any individual country and cannot be repudiated, as is the case with paper assets. Gold is not subject to the risk of default or bankruptcy. Gold cannot be created at will as can paper-backed assets. Some of gold's investment attributes are shared with traditional portfolio diversifiers, which include non-United States equities, emerging markets securities, real estate investment trusts, and domestic and foreign bonds. However, the Exchange notes that according to the Registration Statement, over the last ten years, gold is the only one of these diversifiers that has been negatively correlated with the Standard & Poor's 500 Index (''S&P''), which is widely regarded as the standard for measuring the stock market performance of large capitalized United States companies. In the search for effective diversification, investors have begun to turn to a variety of non-traditional diversifiers, such as hedge and private equity funds, commodities, timber and forestry, fine art and collectibles. The Exchange notes, however, that according to the Registration Statement, gold has one or more of the following advantages over each of these non-traditional diversifiers: Greater liquidity, lower risk, and lower management and holding costs. According to the Registration Statement, gold is also often purchased as a hedge against inflation and currency fluctuations because, historically, it has tended to maintain its long-term value in terms of purchasing power.

As stated in the Registration Statement, the Exchange further notes that the Shares are intended to offer investors a new and different opportunity to participate in the gold market through the securities market. Most pension funds, mutual funds, and other investment vehicles do not or cannot hold physical commodities or their derivatives. In addition, the Exchange also contends that the logistics of buying, storing, and insuring gold have constituted a barrier to entry for institutional and retail investors alike. The logistics of storing and insuring gold are dealt with by the Custodian, and the related expenses are built into the price of the Shares. Therefore, the investor does not have any additional tasks or costs over and above those associated with dealing in any other publicly traded security.

Movements in the Price of Gold

As noted in the Registration Statement, the value of the Shares relates directly to the value of the gold held by the Trust, and fluctuations in the price of gold are expected to directly affect the price of the Shares. Consequently, the Exchange discusses below recent movements in the price of gold.

After reaching a 20-year low in July 1999 of approximately $250 per troy ounce, the gold price has staged a gradual increase, and currently trades in the $350–400 per troy ounce range. According to the Registration Statement, the initial reason for the market's turnaround during 1999 was the strong rise in physical demand, notably in price sensitive markets such as China, Egypt, India, and Japan. The price of gold rose sharply in September 1999, largely as a reflection of the institution of the Central Bank Gold Agreement,[14] which removed an important element of uncertainty from the market and led not just to renewed professional interest in the market but also to short-covering purchases. According to the Registration Statement, the Central Bank Gold Agreement underpinned improved sentiment in the longer term (fears over official sector sales had been a key element to negative sentiment across the market in the latter part of the 1990s).

Despite the Central Bank Gold Agreement, the Exchange notes that the price of gold experienced a downward trend in 2000 for a number of reasons, including renewed strength in the dollar (gold is often perceived as a dollar hedge), strong global economic growth, low inflation and, for much of the year, buoyant stock markets in the United States and other key countries. This

[13] Telephone conference between James F. Duffy, Senior Vice President, Associate General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission, on June 9, 2004 (confirming to Commission staff that The London Code of Conduct for Non-Investment Products is a voluntary code of conduct among market participants.).

[14] Over the past 10 years, the Exchange states that a number of central banks have sold portions of their gold, most of which is simply held in vaults and not bought, sold, leased or swapped or otherwise mobilized in the open market, creating an element of instability in the price of gold. Since 1999, such sales have been made in a coordinated manner under the terms of the Central Bank Gold Agreement, under which 15 of the world's major central banks (including the European Central Bank) agreed to limit the level of their gold sales and lending to the market for five years. The Registration Statement notes that although the Central Bank Gold Agreement is widely expected to be renewed, probably for a further five years, when it expires in September 2004, it is possible that this agreement will not be renewed. In the event that future economic, political or social conditions or pressures results in the liquidation of gold assets by central banks all at once or in an uncoordinated manner, the demand for gold might not be sufficient to accommodate the sudden increase in the supply of gold to the market. Consequently, the price of gold could decline significantly, which would adversely affect an investment in the Shares.

downward price trend persisted into the early part of 2001. At this time the gold price once again appeared to be approaching $250 per troy ounce but, as before, strong physical demand from price sensitive markets such as India again countered the downward trend.

The Exchange further notes that, according to the Registration Statement, the sentiment in the gold market started to change in early 2001, and the gold price has shown an upward trend since March of that year. A rapid economic slowdown occurred in the world economy, while stock markets in the United States and other key countries were falling. There was an end to the significant disinvestment in gold in Europe and North America that had affected gold prices during 2000. In addition, the rapid sequence of interest rate cuts in the United States reduced the risk/reward ratio that had previously been enjoyed by speculators who had been trading in the gold market from the short side (*i.e.,* selling forward or futures with a view to buying back at a lower price). Lower interest rates reduced the contango [15] available and this, combined with steady prices, meant that such trades became increasingly unattractive. After the first quarter of 2001, some mining companies started to reduce their hedge books, reducing the amount of gold coming onto the market. Political uncertainties and the continuing economic downturn after the attacks of September 11, 2001 added to demand for gold investments.

According to the Registration Statement, the Exchange notes the continuation of the upward price trend during 2002 reflected concerns over the global economy, equity markets and whether stock prices were discounting over-optimistic earnings streams, along with concerns over banking crises (Argentina, Japan), currency volatility (notably affecting the United States dollar), corporate governance issues, and growing political tension. Political issues remained influential during the Fall of 2003. The markets have been attuned to the changing nuances in the political arena, notably with respect to the Middle East. North Korea's recent moves to reactivate its nuclear program have also been a topic of considerable concern, and tensions between Pakistan and India also fueled purchases. Buying activity in the gold market as a result of political tensions has come from a full range of market participants. These participants have ranged from the ''man in the street,'' particularly in Asia, through money managers looking to diversify risk, to speculators looking to trade trends. The Registration Statement states that speculative activity also contributed to the increases in the gold price over the period and to the retracement of such increases under bouts of profit taking when tensions appeared to be easing. According to the Registration Statement, however, the risk-averse investors have generally not left the market. Volatility in the price also deterred potential jewelry purchasers in price sensitive markets from entering the market, as many of these buyers prefer to wait for stable times. These purchasers have, however, returned to the market each time the price has stabilized and have, as they have in the past, been prepared to adapt to new price ranges as and when necessary.

As explained in the Registration Statement, and noted by the Exchange, historically, any sudden and significant rise in the price of gold has been followed by a reduction in physical demand which lasts until the period of unusual volatility is past. Gold price increases also tend to lead to an increase in the levels of recycled scrap used for gold supply. Both of these factors have tended to limit the extent and duration of upward movements in the price of gold.

The Sponsor

The Sponsor, World Gold Trust Services LLC, a wholly owned limited liability company of the World Gold Council, is responsible for the registration of the Shares. The Sponsor will oversee the Trust's administration but will not exercise day-to-day oversight over the Trustee or the Custodian. The Sponsor will regularly communicate with the Trustee to monitor the overall performance of the Trust. The Sponsor will exercise oversight over the Trust's legal, accounting and other professional service providers and, along with the Trustee, will liaise with these service providers as needed. The Sponsor, with assistance and support from the Trustee, will be responsible for preparing and filing certain periodic reports on behalf of the Trust with the Commission. The Sponsor will be responsible for and will oversee any marketing of the Shares. The Sponsor will maintain a public website (*http://www.equitygoldshares.com*) on behalf of the Trust, which will contain information about the Trust and the Shares, and will oversee certain Shareholder services, such as a call center and prospectus fulfillment. The Sponsor may direct the Trustee to sell the Trust's gold to pay expenses, to suspend a redemption order or postpone a redemption settlement date or, under certain circumstances, to terminate the Trust. The Sponsor may also remove the Trustee and appoint a successor Trustee in specific circumstances and may remove the Custodian and appoint a successor, as long as the appointment does not have a material adverse effect on the Trustee's ability to perform its duties.

The Trustee

The Trustee, Bank of New York, is generally responsible for the day-to-day administration of the Trust, including keeping the Trust's operational records. The Trustee's principal responsibilities include (1) monitoring the Trust's on-going expenses and selling the Trust's gold as needed to pay the Trust's expenses (gold sales are expected to occur approximately monthly in the ordinary course), (2) calculating the net asset value (''NAV'') of the Trust and the NAV per Share, (3) receiving and processing orders from Authorized Participants to create and redeem Baskets (defined below) and coordinating the processing of such orders with the Custodian and Depository Trust Company (''DTC''), and (4) monitoring the Custodian. The Trustee will regularly communicate with the Sponsor to monitor the overall performance of the Trust. The Trustee, along with the Sponsor, will liaise with the Trust's legal, accounting, and other professional service providers as needed. The Trustee will prepare and file reports on Form 8–K identifying gold sales by the Trust and will assist and support the Sponsor with the preparation of all other periodic reports required to be filed with the SEC on behalf of the Trust. The Trustee and any of its affiliates may from time to time purchase or sell Shares for their own accounts, as agent for their customers, and for accounts over which they exercise investment discretion.

The Custodian

The Custodian, an indirect wholly owned subsidiary of HSBC Holdings plc, is responsible for the safekeeping of the Trust's gold deposited with it by Authorized Participants in connection with the creation of Baskets. The Custodian is also responsible for selecting its direct subcustodians, if any. The Custodian facilitates the transfer of gold in and out of the Trust through the unallocated gold accounts it will maintain for each Authorized Participant and the unallocated and allocated gold accounts it will maintain for the Trust. The Custodian is responsible for allocating specific bars

[15] The contango is the premium available on gold for future delivery.

of gold bullion to the Trust's allocated gold account. The Custodian will provide the Trustee with regular reports detailing the gold transfers in and out of the Trust's unallocated and allocated gold accounts and identifying the gold bars held in the Trust's allocated gold account. The Custodian is an authorized depository under the rules of the LBMA. The Custodian and any of its affiliates may from time to time purchase or sell Shares for their own account, as agent for their customers and for accounts over which they exercise investment discretion.

The Trust

General Description

The purpose of the Trust is to hold gold bullion.[16] The investment objective of the Trust is for the Shares to reflect the performance of the price of gold, less the Trust's expenses.

The Trust is an investment trust and is not managed like a corporation or an active investment vehicle. The Trust has no board of directors or officers or persons acting in a similar capacity. The Trust is not a registered investment company under the Investment Company Act of 1940 (''1940 Act'') and is not required to register under such Act. The Sponsor, on behalf of the Trust, has requested relief from certain periodic reporting and information requirements of the Act, application of the certification rules under Section 302 of the Sarbanes-Oxley Act of 2002, and relief from Rules 13a-15 and 15d-15 under the Act. In addition, the Trust will not be subject to the Exchange's corporate governance requirements, including the Exchange's audit committee requirements.[17]

Trust's Expenses

Operating expenses of the Trust include (1) fees paid to the Sponsor, (2) fees paid to the Trustee, (3) fees paid to the Custodian, and (4) various Trust administration fees, including printing and mailing costs, call center costs, legal and audit fees, registration fees, and NYSE listing fees. The Trust's ordinary operating expenses are accrued daily and reflected in the NAV of the Trust. The Sponsor will pay the costs of the Trust's organization and the initial sale of the Shares, including the applicable SEC registration fees.

Fees are paid to the Sponsor as compensation for services performed under the Trust Indenture and for services performed in connection with maintaining the Trust's website and marketing the Shares. The Sponsor's fee is payable monthly in arrears and is based on an annual amount equal to 0.05% of the daily adjusted NAV (ANAV) of the Trust. The Sponsor's fee, which may not exceed the actual costs to the Sponsor of providing its services to the Trust, does not commence until the Trust's ANAV first reaches $1 billion and only after the 30th day following the commencement of the trading of the Shares on the NYSE. The Sponsor will receive reimbursement from the Trust for all of its disbursements and expenses incurred in connection with the Trust exclusive of its ordinary disbursements and expenses incurred through the 30th day following the commencement of the trading of the Shares on the NYSE.

Fees are paid to the Trustee as compensation for services performed under the Trust Indenture. The Trustee's fee is payable monthly in arrears and is based on an annual amount equal to 0.02% of the first $10 billion of the daily ANAV of the Trust, subject to a minimum fee of $500,000 per year and a maximum fee of $2 million per year.

The Trustee will charge no fee and will pay the ordinary expenses of the Trust's operation for the 30-day period following the day the Shares commence trading on the NYSE. Starting the 31st day after the commencement of the trading of the Shares on the NYSE through the first anniversary of such commencement, the Trustee will reduce its fee and will assume the ordinary expenses of the Trust to the extent that the aggregate annual expenses of the Trust exceed 0.30% of the average daily value of the Trust's assets (determined without deduction of any Trust expenses). The Trustee and the Sponsor have a separate agreement concerning payment by the Sponsor of compensation to the Trustee for this period.

Subject to the periods described above when the Trustee will bear all or part of the Trust's expenses, the Trustee will charge the Trust for its expenses and disbursements incurred in connection with the Trust (including the expenses of the Custodian paid by the Trustee), exclusive of fees of agents for services to be performed by the Trustee, and for any extraordinary services performed by the Trustee for the Trust.

Fees are paid to the Custodian under the Allocated Bullion Account Agreement as compensation for its custody services. Under the Allocated Bullion Account Agreement, the Custodian is entitled to an annual fee equal to 0.10% of the average daily aggregate value of the gold held in the Trust's allocated gold account (''Trust Allocated Account'')[18] and the Trust's unallocated gold account (''Trust Unallocated Account''),[19] payable in quarterly installments in arrears. The Custodian does not receive a fee under the Unallocated Bullion Account Agreement.

The Trustee will sell gold held by the Trustee on an as-needed basis to pay the Trust's expenses. As a result, the amount of the gold to be sold will vary from time to time depending on the level of the Trust's expenses and the market price of gold. Cash held by the Trustee pending payment of the Trust's expenses will not bear any interest.

[16] 16 The Exchange states that the Commission has permitted the listing of prior products for which the underlying was a commodity or otherwise was not a security trading on a regulated market. *See, e.g.*, Securities Exchange Act Release Nos. 19133 (October 14, 1982) (approving the listing of standardized options on foreign currencies); 36505 (November 22, 1995) (approving the listing of dollar-denominated delivery foreign currency options on the Japanese Yen); 36165 (August 29, 1995) (approving listing standards for, among other things, currency and currency index warrants). The Exchange also states that there are other securities trading on regulated markets that invest in commodities. *See, e.g.*, Central Fund of Canada (Registration No. 033–15180) (symbol CEF), or in royalty interests based on commodities); Hugoton Royalty Trust (Registration No. 333–68441) (symbol HGT).

[17] *See* Securities Exchange Act Release Nos. 48745 (November 4, 2003) (specifically noting that the corporate governance standards will not apply to, among others, passive business organizations in the form of trusts); and 47654 (April 25, 2003) (noting in Section II(F)(3)(c) that ''SROs may exclude from Exchange Act Rule 10A–3's requirements issuers that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.'').

[18] The Registration Statement defines an allocated account as an account with a bullion dealer, which may also be a bank, to which individually identified gold bars owned by the account holder are credited. The gold bars in an allocated gold account are specific to that account and are identified by a list which shows, for each gold bar, the refiner, assay, serial number and gross and fine weight. The account holder has full ownership of the gold bars and the bullion dealer may not trade, lease, or lend the bars.

[19] The Registration Statement defines an unallocated account as an account with a bullion dealer, which may also be a bank, to which a fine weight amount of gold is credited. The account holder is entitled to direct the bullion dealer to deliver an amount of physical gold equal to the amount of gold standing to the credit of the account holder. The account holder has no ownership interest in any specific bars of gold that the bullion dealer holds or owns. When delivering gold, the bullion dealer will allocate physical gold from its general stock to the account holder with a corresponding debit being made to the amount of gold credited to the unallocated account. The account holder is an unsecured creditor of the bullion dealer and credits to an unallocated account are at risk of the bullion dealer's insolvency.

Description of the Shares

General

The Exchange states that the Shares do not represent a traditional investment in shares of a corporation operating a business enterprise with management and a board of directors and do not carry with them the statutory rights normally associated with the ownership of shares of a corporation. For example, the Exchange concludes that the Shareholders would not have the right to bring ''oppression'' or ''derivative'' actions.'' All Shares are of the same class with equal rights and privileges. Each Share is transferable and is fully paid and non-assessable. Holders of Shares have no voting rights, except in certain limited instances.

Distributions and Share Splits

The Exchange states that shareholders may receive distributions in only two circumstances. First, if the Trustee and the Sponsor determine that the Trust's cash account balance exceeds the anticipated expenses of the Trust for the next 12 months and the excess amount is more than $0.01 per Share outstanding, they shall direct the excess amount to be distributed to the Shareholders. Second, if the Trust is terminated and liquidated, the Trustee will distribute to the Shareholders any amounts remaining after the satisfaction of all outstanding liabilities of the Trust and the establishment of such reserves for applicable taxes, other governmental charges, and contingent or future liabilities as the Trustee shall determine.

If the Sponsor believes that the per Share price in the secondary market for Shares has fallen outside a desirable trading price range, the Sponsor may direct the Trustee to declare a split or reverse split in the number of Shares outstanding and to make a corresponding change in the number of Shares constituting a Basket.

Liquidity

The Exchange states that the amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the major gold markets and the NYSE. While the Shares will trade on the NYSE until 4 PM New York time, liquidity in the OTC market for gold will be reduced after the close of the COMEX at 1:30 PM New York time. During this time, trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity in the OTC gold market.[20]

Because of the potential for arbitrage inherent in the structure of the Trust, the Sponsor believes that the Shares will not trade at a material discount or premium to the underlying gold held by the Trust. The arbitrage process, which in general provides investors the opportunity to profit from differences in prices of assets, increases the efficiency of the markets, serves to prevent potentially manipulative efforts, and can be expected to operate efficiently in the case of the Shares and gold. If the price of the Shares deviates enough from the price of gold to create a material discount or premium, an arbitrage opportunity is created. If the Shares are inexpensive compared to the gold that underlies them, an arbitrageur may buy the Shares at a discount, immediately redeem them in exchange for gold, and sell the gold in the cash market at a profit. If the Shares are expensive compared to the gold that underlies them, an arbitrageur may sell the Shares short, buy enough gold to acquire the number of Shares sold short, acquire the Shares through the creation process, and deliver the Shares to close out the short position.[21] In both instances, the arbitrageur serves efficiently to correct price discrepancies between the Shares and the underlying gold.[22]

Book Entry Form

DTC will act as securities depository for the Shares.[23] Individual certificates will not be issued for the Shares. Instead, a global certificate will be deposited by the Trustee with DTC and registered in the name of Cede & Co., as nominee for DTC. The global certificate will evidence all of the Shares outstanding at any time. Shareholders are limited to (1) participants in DTC such as banks, brokers, dealers, and trust companies (''DTC Participants''), (2) those who maintain, either directly or indirectly, a custodial relationship with a DTC Participant (''Indirect Participants''), and (3) those banks, brokers, dealers, trust companies, and others who hold interests in the Shares through DTC Participants or Indirect Participants. Shares are only transferable through the book-entry system of DTC. Shareholders who are not DTC Participants may transfer their Shares through DTC by instructing the DTC Participant holding their Shares (or by instructing the Indirect Participant or other entity through which their Shares are held) to transfer the Shares. Transfers will be made in accordance with standard securities industry practice.

Upon the settlement date of any creation, transfer, or redemption of Shares, DTC will credit or debit on its book-entry registration and transfer system, the amount of the Shares so created, transferred, or redeemed to the accounts of the appropriate DTC Participants. The Trustee and the DTC Participants will designate the accounts to be credited and charged in the case of creation or redemption of Shares. Beneficial ownership of the Shares will be limited to DTC Participants, Indirect Participants, and persons holding interests through DTC Participants and Indirect Participants. Owners of beneficial interests in the Shares will be shown on, and the transfer of ownership will be effected only through, records maintained by DTC (with respect to DTC Participants), the records of DTC Participants (with respect to Indirect Participants), and the records of Indirect Participants (with respect to beneficial owners that are not DTC Participants or Indirect Participants). Beneficial owners are expected to receive from or through the DTC Participant a written confirmation relating to their purchase of the Shares. Shareholders may transfer the Shares through DTC by instructing the DTC Participant or Indirect Participant through which the Shareholders hold their Shares to transfer the Shares.

Issuance of the Shares

The Trust will create Shares on a continuous basis only in aggregations of 100,000 Shares (such aggregation

[20] As noted above in the section titled ''Description of the Gold Market,'' the period of greatest liquidity in the gold market is typically that time of the day when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in London, New York, and other centers coincides with futures and options trading on the COMEX division of the NYMEX. This period lasts for approximately four hours each New York business day morning.

[21] 21 The Exchange states that the Trust, which will only hold gold, differs from index-based exchange-traded funds, which may involve a trust holding hundreds or even thousands of underlying component securities, necessarily involving in the arbitrage process movements in a large number of security positions. *See, e.g.,* Securities Exchange Act Release No. 46306 (August 2, 2002) (approving the UTP trading of Vanguard Total Market VIPERs based on the Wilshire 5000 Total Market Index).

[22] *See* draft Letter from Mary Joan Hoene, Carter Ledyard & Milburn LLP, to Paula Dubberly, Chief Counsel, Division of Corporation Finance (''Corporation Finance''), and James Brigagliano, Assistant Director, Trading Practices, Division of Market Regulation (''Division''), Commission, (discussing the arbitrage potential of the Shares) (the ''Trading Practices Letter'').

[23] DTC may decide to discontinue providing its service with respect to Baskets and/or the Shares by giving notice to the Trustee and the Sponsor. Under such circumstances, the Trustee and the Sponsor will either find a replacement for DTC to perform its functions at a comparable cost or, if a replacement is unavailable, terminate the Trust.

referred to as a ''Basket''), principally in exchange for gold (''Gold Deposit''), together with, if applicable, a specified cash payment (''Cash Deposit'',[24] and together with the Gold Deposit, the ''Creation Basket Deposit''). The Sponsor anticipates that in the ordinary course of the Trust's operations a cash deposit will not be required for the creation of Baskets. Similarly, the Trust will redeem Shares only in Baskets, principally in exchange for gold and, if applicable, a cash payment (''Cash Redemption Amount''[25] and together with the gold, the ''Redemption Distribution''). Authorized Participants[26] are the only persons that may place orders to create and redeem Baskets. The Exchange states that certain Authorized Participants are expected to have the facility to participate directly in the gold bullion market and the gold futures market. The Sponsor believes that the size and operation of the gold bullion market make it unlikely that an Authorized Participant's direct activities in the gold or securities markets will impact the price of gold or the price of the Shares. The Exchange states that each Authorized Participant is (i) regulated as a broker-dealer regulated under the Act and registered with the National Association of Securities Dealers, Inc. (''NASD''), or (ii) is exempt from being, or otherwise is not required to be, regulated as a broker-dealer under the Act or registered with the NASD, and in either case is qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires. Certain Authorized Participants will be regulated under federal and state banking laws and regulations. Each Authorized Participant will have its own set of rules and procedures, internal controls, and information barriers as it determines is appropriate in light of its own regulatory regime. Authorized Participants may act for their own accounts or as agents for broker-dealers, custodians, and other securities market participants that wish to create or redeem Baskets. An order for one or more Baskets may be placed by an Authorized Participant on behalf of multiple clients.

Creation and Redemption

Authorized Participants may sell to other investors all or part of the Shares included in the Baskets they purchase from the Trust. The creation and redemption of Baskets require the delivery to or by the Trust of the amount of gold and any cash represented by the Baskets being created or redeemed. The total amount of gold and any cash required for the creation or redemption of each Basket will be in the same proportion to the total assets of the Trust (net of accrued and unpaid fees, expenses and other liabilities) on the date the Purchase Order is properly received as the number of Shares to be created in respect of the Creation Basket Deposit bears to the total number of Shares outstanding on the date the Purchase Order is received.[27] Except when aggregated in Baskets, the Shares are not redeemable. The Trust will impose transaction fees in connection with creation and redemption transactions.

The Trustee will determine the NAV[28] and ANAV of the Trust on each business day at the earlier of the London PM Fix for such day or 12 PM New York time.[29] In determining the Trust's NAV, the Trustee will value the gold held by the Trust based on the London PM Fix price for a troy ounce of gold. The Trustee will also determine the NAV per Share by dividing the NAV of the Trust by the number of the Shares outstanding as of the close of trading on the NYSE.

Once the value of the gold has been determined, the Trustee will determine the ANAV of the Trust by subtracting all accrued fees (other than the fees to be computed by reference to the value of the Trust's assets), expenses, and other liabilities of the Trust from the total value of the gold and all other assets of the Trust (other than any amounts credited to the Trust's reserve account, if established). The ANAV of the Trust is used to compute all fees (including the Trustee's and the Sponsor's fees), which are calculated from the value of the Trust's assets. To determine the Trust's NAV, the Trustee will subtract the amount of accrued fees, computed from the value of the Trust's assets using ANAV, from the ANAV amount.

UBS Securities LLC, the Initial Purchaser, is expected to purchase 100,000 Shares, which will comprise the seed Basket. The Initial Purchaser has, subject to conditions, also agreed to purchase 900,000 Shares, which comprise the initial Baskets. The Trust

[24] The amount of any required Cash Deposit will be determined as follows: (1) the fees, expenses and liabilities of the Trust will be subtracted from any cash held or receivable by the Trust as of the date an Authorized Participant (defined herein) places an order to purchase one or more Baskets (''Purchase Order''); (2) the remaining amount will be divided by the number of Baskets outstanding and then multiplied by the number of Baskets being created pursuant to the Purchase Order. If the resulting amount is positive, that amount will be the required Cash Deposit. If the resulting amount is negative, the amount of the required Gold Deposit will be reduced by a number of fine ounces of gold equal in value to that resulting amount, determined by reference to the price of gold used in calculating the NAV of the Trust on the Purchase Order date. Fractions of an ounce of gold of less than 0.001 of an ounce included in the Gold Deposit amount will be disregarded. All questions as to the amount and composition of a Creation Basket Deposit will be finally determined by the Trustee in consultation with the Custodian.

[25] The Cash Redemption Amount is equal to the excess (if any) of all assets of the Trust other than gold over all accrued fees, expenses, and other liabilities, divided by the number of Baskets outstanding and multiplied by the number of Baskets included in the Authorized Participant's order to redeem one or more Baskets (''Redemption Order''). The Trustee will distribute any positive Cash Redemption Amount through DTC to the account of the Authorized Participant at DTC. If the Cash Redemption Amount is negative, the credit to the Authorized Participant's unallocated account (''Authorized Participant Unallocated Account'') will be reduced by the number of fine ounces of gold equal in value to that resulting amount, determined by reference to the price of gold used in calculating the NAV of the Trust on the Redemption Order date. Fractions of a fine ounce of gold included in the Redemption Distribution of less than 0.001 of an ounce will be disregarded. Redemption Distributions will be subject to the deduction of any applicable tax or other governmental charges due. All questions regarding the amount and composition of a Redemption Distribution will be finally determined by the Trustee in consultation with the Custodian.

[26] Authorized Participants must be registered broker-dealers or other securities market participants, such as banks and other financial institutions that are not required to register as broker-dealers to engage in securities transactions, who are participants in DTC. To become an Authorized Participant, a person must enter into a Participant Agreement with the Sponsor and the Trustee. The Participant Agreement provides the procedures for the creation and redemption of Baskets and for the delivery of the gold and any cash required for such creations and redemptions. Prior to initiating any creation or redemption order, an Authorized Participant must have entered into a Participant Unallocated Bullion Account Agreement with the Custodian to establish an Authorized Participant Unallocated Account in London. Authorized Participant Unallocated Accounts may only be used for transactions with the Trust. An Authorized Participant will bear all credit risk associated with its unallocated account.

[27] The initial amount of gold required for deposit to create Shares is 10,000 troy ounces per Basket. The number of ounces of gold required to create a Basket or to be delivered upon a redemption of a Basket will gradually decrease over time because the Shares comprising a Basket will represent a decreasing amount of gold due to the sale of the Trust's gold to pay the Trust's expenses.

[28] The NAV of the Trust is the aggregate value of the Trust's assets less its liabilities (which include accrued expenses).

[29] For purposes of calculating the Trust's ANAV and NAV, a business day means any day when the NYSE is open for regular trading. If on a day when the Trust's NAV is being calculated the London PM Fix gold price is not available, the gold price from the next most recent London Fix (AM or PM) will be used, unless the Trustee determines that such price is inappropriate to use. The Trust's assets will consist of allocated gold bullion, gold credited to an unallocated gold account, and, from time to time, cash, which will be used to pay expenses. Except for the transfer of gold in or out of the Trust's unallocated account connected with the creation or redemption of a Basket or upon a sale of gold, it is anticipated that only a small amount of gold will be held in unallocated form by the Trust. Cash held by the Trust will not generate any income.

will receive all proceeds from the offering of the seed Basket and the initial Baskets in gold bullion. In connection with the offering and sale of the initial Baskets, the Initial Purchaser will be paid a fee by the Sponsor at the time of its purchase of the initial Baskets. In addition, the Initial Purchaser may receive commissions/fees from investors who purchase Shares from the initial Baskets through their commission/fee-based brokerage accounts.

Clearance and Settlement

Set forth below is a description of the mechanisms for the settlement and redemption of the Shares.

Creation Orders

An Authorized Participant who places a Purchase Order is responsible for crediting its Authorized Participant Unallocated Account with the required Gold Deposit amount by the end of the second business day in London following the Purchase Order date. Upon receipt of the Gold Deposit, the Custodian, after receiving appropriate instructions from the Authorized Participant and the Trustee, will transfer on the third business day following the Purchase Order date the Gold Deposit amount from the Authorized Participant Unallocated Account to the Trust Unallocated Account, and the Trustee will direct DTC to credit the Basket to the Authorized Participant's book-entry DTC account. The Trust will furnish a prospectus and a confirmation to those Authorized Participants placing Purchase Orders.

Acting on standing instructions given by the Trustee, the Custodian will transfer the Gold Deposit amount from the Trust Unallocated Account to the Trust Allocated Account by transferring gold bars from its inventory to the Trust Allocated Account.

Because gold is allocated only in multiples of whole bars, the amount of gold allocated from the Trust Unallocated Account to the Trust Allocated Account may be less than the total fine ounces of gold credited to the Trust Unallocated Account. Any balance will be held in the Trust Unallocated Account. The Custodian will follow practices designed to minimize the amount of gold held in the Trust Unallocated Account so that generally no more than 430 troy ounces of gold will be held in the Trust Unallocated Account at the close of any business day.

Redemption Orders

The Redemption Distribution due from the Trust will be delivered to the Authorized Participant on the third business day following the date on which an Authorized Participant places a Redemption Order if, by 9 a.m. New York time on such third business day, the Trustee's DTC account has been credited with the Baskets to be redeemed and, if the Trustee's DTC account has not been so credited by such time, the Redemption Distribution will be delivered to the extent of whole Baskets received. Any remainder of the Redemption Distribution will be delivered on the next business day to the extent of the remaining whole Baskets received if the Trustee receives the fee applicable to the extension of the Redemption Distribution date as the Trustee may, from time to time, determine and the remaining Baskets to be redeemed are credited to the Trustee's DTC account by 9 a.m. New York time on such next business day. Any further outstanding amount of the Redemption Order shall be cancelled. The Trustee is also authorized to deliver the Redemption Distribution notwithstanding that the Baskets to be redeemed are not credited to the Trustee's DTC account by 9 a.m. New York time on the third business day following the redemption order date if the Authorized Participant has collateralized its obligation to deliver the Baskets on such terms as the Sponsor and the Trustee may from time to time agree upon.

The Custodian will transfer the gold Redemption Amount from the Trust Allocated Account to the Trust Unallocated Account and, thereafter, to the redeeming Authorized Participant Unallocated Account. Similar to the allocation of gold to the Trust Allocated Account which occurs upon a Purchase Order, if in transferring gold from the Trust Allocated Account to the Trust Unallocated Account in connection with a Redemption Order there is an excess amount of gold transferred to the Trust Unallocated Account, the excess over the gold Redemption Amount will be held in the Trust Unallocated Account.

Risk Factors to Investing in the Shares

As set forth in the Registration Statement, an investment in the Shares carries certain risks. The Exchanges restates the following risk factors are taken from and discussed in more detail in the Registration Statement.

The value of the Shares relates directly to the value of the gold held by the Trust and fluctuations in the price of gold could materially adversely affect an investment in the Shares.

- The sale of gold by the Trust to pay expenses will reduce the amount of gold represented by each Share on an ongoing basis irrespective of whether the trading price of the Shares rises or falls in response to changes in the price of gold.
- Expenses of the Trust may be higher than anticipated, thus reducing the NAV of the Trust more rapidly than anticipated and adversely affecting the value of the Shares.
- The sale of the Trust's gold to pay expenses at a time of low gold prices could adversely affect the value of the Shares.
- Purchasing activity in the gold market associated with the purchase of Baskets from the Trust may cause a temporary increase in the price of gold. This increase may adversely affect an investment in the Shares.
- As the Sponsor and its management have no history of operating an investment vehicle like the Trust, their experience may be inadequate or unsuitable to manage the Trust.
- The Shares are a new securities product, and their value could decrease if unanticipated operational or trading problems arise.
- The Trust may be required to terminate and liquidate at a time that is disadvantageous to Shareholders.
- The lack of a market for the Shares may limit the ability of Shareholders to sell the Shares.
- The operations of the Trust and the Sponsor depend on support from the World Gold Council. This support may not be available in the future and, if such support is not available, the operations of the Trust may be adversely affected.
- Shareholders will not have the rights enjoyed by investors in certain other vehicles.
- An investment in the Shares may be adversely affected by competition from other methods of investing in gold.
- Crises may motivate large-scale sales of gold that could decrease the price of gold and adversely affect an investment in the Shares.
- Substantial sales of gold by the official sector could adversely affect an investment in the Shares.
- Widening of interest rate differentials could negatively affect the price of gold that, in turn, could negatively affect the price of the Shares.
- The Trust's gold may be subject to loss, damage, theft, or restriction on access.
- The Trust may not have adequate sources of recovery if its gold is lost, damaged, stolen, or destroyed.
- Gold bullion allocated to the Trust in connection with the creation of a Basket may not meet the London Good Delivery Standards and, if a Basket is

issued against such gold, the Trust may suffer a loss.

• Because the Trustee and the Custodian do not oversee or monitor the activities of subcustodians who may hold the Trust's gold, and there can be no assurance that subcustodians will exercise due care in the safekeeping of the Trust's gold.

• The ability of the Trustee and the Custodian to take legal action against subcustodians may be limited which increases the possibility that the Trust may suffer a loss if a subcustodian does not use due care in the safekeeping of the Trust's gold.

• If the Custodian becomes insolvent, gold held in the Trust Unallocated Account or any Authorized Participant's unallocated gold account would represent an unsecured claim against the Custodian, and the Custodian's assets may not be adequate to satisfy a claim by the Trust or any Authorized Participant.

• In issuing Baskets, the Trustee will rely on certain information received from the Custodian that is subject to confirmation after the Trustee has relied on the information. If such information turns out to be incorrect, Baskets may be issued in exchange for an amount of gold that is more or less than the amount of gold that is required to be deposited with the Trust.

• The Trust's obligation to reimburse the Initial Purchaser for certain liabilities in the event the Sponsor fails to indemnify the Initial Purchaser could adversely affect an investment in the Shares.

Availability of Information Regarding Gold Prices

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity, such as gold, over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of gold price and gold market information available on public websites and through professional and subscription services. As is the case with equity securities generally and exchange-traded funds specifically, in most instances, real-time information is only available for a fee, and information available free of charge is subject to delay (typically, 20 minutes).

The Exchange states that investors may obtain on a 24-hour basis gold pricing information based on the spot price for a troy ounce of gold from various financial information service providers, such as Reuters and Bloomberg.[30] Reuters and Bloomberg provide at no charge on their websites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. The Exchange states that complete real-time data for gold futures and options prices traded on the COMEX (a division of the NYMEX) are available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its website. The Exchange also notes that there are a variety of other public websites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers, such as *The Washington Post.* Many of these sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, it generally is subject to time delays.[31] Like bond securities traded in the OTC market with respect to which pricing information is available directly from bond dealers, current gold spot prices are also generally available with bid/ask spreads from gold bullion dealers.[32]

In addition, the NYSE, via a link to the Trust's website, will provide at no charge continuously updated bids and offers indicative of the spot price of gold on its own public website, *http://www.nyse.com.*[33] The Trust website will also provide an intraday indicative value per share for the Shares calculated by multiplying the indicative spot price of gold by the quantity of gold backing each Share.[34] Notwithstanding that they will be provided free of charge, the indicative spot price and intraday indicative value per Share will be provided on an essentially real-time basis.[35] The Trust website will also provide the NAV of the Trust as calculated each business day by the Sponsor. Finally, the Trust website will also provide the last sale price of the Shares as traded in the United States market, subject to a 20-minute delay, as it is provided free of charge.[36]

Other Characteristics of the Shares

General Information

It is anticipated that a minimum of three Baskets will be outstanding at the commencement of trading on the Exchange. The number of Shares per Basket is 100,000.

Trading in Shares on the Exchange will be effected normally until 4:15 p.m. each business day. The minimum trading increment for Shares on the Exchange will be $0.01.

Fees

The Exchange original listing fee applicable to the listing of the Trust will

[30] Information about the pricing data provided by Reuters and Bloomberg has been provided to the Exchange by the Sponsor. Because the financial information service providers described are not affiliated with, or regulated by, the Exchange, and operate independently from the Exchange, the Exchange cannot ensure that the pricing information described above will remain available or be available in the same form or manner as described herein. These financial service providers are also not affiliated with the Trust, the Sponsor, or the Custodian.

[31] There may be incremental differences in the gold spot price among the various information service sources. While the Exchange believes the differences in the gold spot price may be relevant to those entities engaging in arbitrage or in the active daily trading of gold or gold-based products, the Exchange believes such differences are likely of less concern to individual investors intending to hold the Shares as part of a long-term investment strategy.

[32] *See, e.g.*, Securities Exchange Act Release No. 46252 (July 24, 2002) (noting that quote and trade information regarding debt securities is widely available to market participants from a variety of sources, including broker-dealers, information service providers, newspapers, and websites).

[33] The Trust website's gold spot price will be provided by The Bullion Desk (*http://www.thebulliondesk.com*). The NYSE will provide a link to the Trust website. The Bullion Desk is not affiliated with the Trust, Sponsor, Custodian, or the Exchange. The Exchange has been informed that the gold spot price is indicative only, constructed using a variety of sources to compile a spot price that is intended to represent a theoretical quote that might be obtained from a market maker from time to time. The Trust website will indicate, as noted above in the discussion titled ''Availability of Information Regarding Gold Prices,'' that there are other sources for obtaining the gold spot price. In the event that the Trust website should cease to provide this indicative spot price from an unaffiliated source and the intraday indicative value of the Shares, the NYSE will delist the shares. *See* discussion of continued listing standards, below.

[34] The intraday indicative value of the Shares is analogous to the intraday optimized portfolio value (sometimes referred to as the IOPV), indicative portfolio value and the intraday indicative value (sometimes referred to as the IIV) associated with the trading of exchange-traded funds. *See, e.g.*, Securities Exchange Act Release No. 46686 (October 18, 2002) for a discussion of indicative portfolio value in the context of an exchange-traded fund.

[35] The Trust's website is expected to indicate that these values are subject to an average delay of 5 to 10 seconds.

[36] The last sale price of the Shares in the secondary market is available on a real-time basis for a fee from regular data vendors.

be $5,000. The annual continued listing fee for the Trust would be $2,000.

Continued Listing Criteria

The Exchange applicable continued listing criteria are as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Shares, there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days; (2) the value of gold is no longer calculated or available from a source unaffiliated with the Sponsor, the Trust, the Custodian or the Exchange, or the Exchange stops providing the hyperlink on the Exchange's website to any such unaffiliated gold value; or (3) such other event shall occur or condition exist that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. In addition, the Exchange will remove Shares from listing and trading upon termination of the Trust.

Exchange Trading Rules and Policies

The Shares are considered ''securities'' pursuant to NYSE Rule 3 and are subject to all applicable trading rules.

The Exchange's surveillance procedures will be comparable to those used for investment company units currently trading on the Exchange and will incorporate and rely upon existing NYSE surveillance procedures governing equities.

The Exchange will adopt new NYSE Rule 1300 (''Equity Gold Shares'') to deal with issues related to the trading of the Shares. Specifically, for purposes of NYSE Rule 13 (''Definitions of Orders''), NYSE Rule 36.30 (''Communications Between Exchange and Members'' Offices''), NYSE Rule 98 (''Restrictions on Approved Person Associated with a Specialist's Member Organization), NYSE Rule 104 (''Dealings by Specialists''), NYSE Rule 105(m) (''Guidelines for Specialists'' Specialty Stock Option Transactions Pursuant to Rule 105''), and NYSE Rule 460.10 (''Specialists Participating in Contests''), 1002 (Availability of Automatic Feature), and 1005 (Orders May Not Be Broken Into Smaller Accounts),[37] the Shares will be treated the same as investment company units.[38] The Exchange does not currently intend to exempt Equity Gold Shares from the Exchange's ''Market-on-Close/Limit-on-Close/Pre-Opening Price Indications'' Policy, although the Exchange may do so in the future if, after having experience with the trading of the Shares, the Exchange believes such an exemption is appropriate.

For intermarket surveillance purposes, the Exchange will enter into a Memorandum of Understanding with the NYMEX prior to the commencement of trading in the Shares. The Exchange will also adopt new NYSE Rule 1301 (''Equity Gold Shares: Securities Accounts and Orders of Specialists'') to ensure that specialists handling Equity Gold Shares provide the Exchange with all necessary information relating to their trading in physical gold and in gold futures contracts and options thereon or any other gold derivative.[39] As a general matter, the Exchange has regulatory jurisdiction over its member organizations and any person or entity controlling a member organization. The Exchange also has regulatory jurisdiction over a subsidiary or affiliate of a member organization that is in the securities business. A member organization subsidiary or affiliate that does business only in commodities would not be subject to NYSE jurisdiction, but the Exchange could obtain certain information regarding the activities of such subsidiary or affiliate through reciprocal agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include (1) the extent to which trading is not occurring in gold or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares is subject to trading halts caused by extraordinary market volatility pursuant to Exchange's ''circuit breaker'' rule.[40]

Pursuant to NYSE Rule 405, before a member, member organization, allied member or employee of such member organization undertakes to recommend a transaction in Shares, such member or member organization should make a determination that such Shares are suitable for such customer. If any recommendation is made with respect to such Shares, the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction.

The Exchange will distribute an information circular to its members in connection with the trading in the Shares. The circular will discuss the special characteristics and risks of trading this type of security. Specifically, the circular, among other things, will discuss what the Shares are, how a Basket is created and redeemed, applicable Exchange rules, dissemination information, trading information, and the applicability of suitability rules.[41] The information circular will also reference that the Trust is subject to various fees and expenses described in the Registration Statement, and that the number of ounces of gold required to create a Basket or to be delivered upon a redemption of a Basket will gradually decrease over time because the Shares comprising a Basket will represent a decreasing amount of gold due to the sale of the Trust's gold to pay the Trust's expenses. The information circular will also reference the fact that there is no regulated source of last sale information regarding physical gold, and that the Commission has no jurisdiction over the trading of gold as a physical commodity. Finally, the information circular will

[37] Telephone conference between James F. Duffy, Senior Vice President, Associate General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission, on June 9, 2004 (correcting typographical error to NYSE Rule 104 and inadvertent omission of NYSE Rules 1002 and 1005).

[38] In particular, Rule 1300 provides that Rule 105(m) is deemed to prohibit an equity specialist, his member organization, other member, allied member or approved person in such member organization or officer or employee thereof from acting as a market maker or functioning in any capacity involving market-making responsibilities in physical gold, gold futures or options on gold futures, or any other gold derivatives, except as otherwise provided therein.

[39] Rule 1301 also states that, in connection with trading physical gold, gold futures or options on gold futures or any other gold derivatives (including Equity Gold Shares), the specialist shall not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in physical gold, gold futures or options on gold futures, or any other gold derivatives. For the purpose of Rule 1301, ''person associated with a member'' shall have the same meaning ascribed to it in Section 3(a)(21) of the Exchange Act.

[40] NYSE Rule 80B.

[41] The information circular will also discuss exemptive relief, if granted, by the Commission from certain rules under the Act. The applicable rules are: Rule 10a–1; Section 11(d) and Rules 11d1–1 and 11d1–2; and Rules 101 and 102 of Regulation M under the Act. Telephone conference between James F. Duffy, Senior Vice President, Associate General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission, on June 9, 2004 (clarifying status of exemptive relief sought).

also note to members language in the Registration Statement regarding prospectus delivery requirements for the Shares.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[42] in general, and furthers the objectives of Section 6(b)(5) of the Act,[43] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2004–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–22 and should be submitted on or before July 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[44]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13694 Filed 6–16–04; 8:45 am]

BILLING CODE 8010–01–P

[42] 15 U.S.C. 78f(b).

[43] 15 U.S.C. 78f(b)(5).

[44] 17 CFR.200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending June 4, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2004–17998.
Date Filed: June 1, 2004.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 375 Resolution 010w, TC3 Africa TC3 Special Amending Resolution, from Phillippines to Africa r1–r3. Intended effective date: 10 June 2004.

Docket Number: OST–2004–18006.
Date Filed: June 3, 2004.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0756 dated 4 June 2004. Mail Vote 381 Resolution 010c Special Passenger, Amending Resolution between Japan and China, (excluding Hong Kong SAR and Macao SAR) r1–r10. Intended effective date 15 July 2004.

Docket Number: OST–2004–18007.
Date Filed: June 3, 2004.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 378, PTC3 0749 dated 4 June 2004. Resolution 010z Special Passenger Amending Resolution between Chinese Taipei and Japan. Intended effective date 21 June 2004.

Docket Number: OST–2004–18008.
Date Filed: June 3, 2004.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 380, PTC 0750 dated 4 June 2004. Resolution 010b Special Passenger Amending Resolution between China (excluding Hong Kong SAR and Macao SAR) and Russia (in Asia) r1–r5. Intended effective date 22 June 2004.

Docket Number: OST–2004–18009.
Date Filed: June 3, 2004.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0755 dated 4 June 2004, Mail Vote 377 Resolution 010y Special Passenger Amending Resolution between Japan and China, (excluding Hong Kong SAR and Macao SAR) r1–r10. Intended effective date 15 June 2004.

Andrea Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–13715 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending June 4, 2004

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending June 4, 2004. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2004–18002.

Date Filed: June 2, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 23, 2004.

Description: Application of America West Airlines, Inc., requesting an experimental certificate of public convenience and necessity to engage in foreign air transportation of persons, property, and mail between Phoenix, AZ and the following eight points in Mexico: Cabo San Lucas, Puerto Vallarta, Cancun, Mexico City, Mazatlan, Acapulco, Ixtapa, and Manzanillo.

Andrea Jenkins,

Program Manager, Docket Operations, Federal Register Liaison, (202) 366–0271.

[FR Doc. 04–13716 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Letter on the Use of Non-Original Equipment Manufacturers' Components in Certified Aviation Obstruction/Antenna Structure Lighting Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of policy.

SUMMARY: The FAA has recently learned of a situation that may degrade aviation safety. The United States has approximately 44,375-antenna structures registered requiring lighting and/or marking. Antenna structures from 200 feet to 500 feet tall number approximately 40,000, and broadcast type antenna structures from 501 feet to 2,000 feet tall number approximately 4,375. All of these structures are subject to maintenance. In some cases, during antenna structure lighting maintenance certified lighting systems are being modified by replacing internal components with untested non-original equipment manufacturers' (non-OEM) parts. Strobe light manufacturers have reported through replacement lamp tracking that at least 8,000 antenna structures in the 200-foot to 500-foot category have untested and unverified lamps in current operation. All obstruction lighting system manufacturers have indicated a similar problem in regard to replacement of critical components through their warranty programs. Original equipment is certified under Advisory Circular 150/5345–53B, the Airport Lighting Equipment Certification Program (ALECP), which ensures the safety of United States airspace by third party laboratory testing of lighting systems and compliance with the requirements of AC 150/5345–43E, Specification of Obstruction Lighting Equipment. AC 150/5345–43E is, by reference, included in Title 47 CFR § 17.23. Production testing and compliance by certified OEM's of obstruction lighting systems and components is a requirement of ALECP. Manufacturers of systems not certified in accordance with AC 150/5345–53B cannot guarantee the compliance of their products or components. Through discussions with obstruction lighting maintenance companies, it is apparent that some antenna structure owners are unaware of these potential violations of Title 47 CFR § 17.23. However, antenna structure owners must keep a record of lighting inspections, which include the date, time, and nature of adjustments, repairs, or replacements made (Title 47 CFR § 17.49(d)). The only way to ensure compliance with AC 150/5345–43E is to utilize original equipment manufacturers' parts or their authorized parts providers. It is FAA policy that aviation obstruction lighting systems that have been serviced using non-original equipment manufacturers' parts are no longer in compliance with FAA specifications of FCC regulations. To ensure United States air navigation safety, this notice is being issued to alert owners of registered antenna structures of required maintenance procedures.

FOR FURTHER INFORMATION CONTACT: Rick Marinelli, Manager, Airport Engineering Division (AAS–100), Federal Aviation Administration, 800 Independence Ave, SW., Washington, DC 20591; telephone (202) 267–7669.

Issued in Washington, DC on June 8, 2004.

David L. Bennet,

Director of Airport Safety and Standards.

[FR Doc. 04–13718 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Technical Standard Order (TSO)–C164, Night Vision Goggles

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and requests for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed Technical Standard Order (TSO) C–164, Night Vision Goggles. This proposed TSO tells persons seeking a TSO authorization or letter of design approval what minimum performance standards (MPS) their Night Vision Goggles must meet to be identified with the applicable TSO marking.

DATES: Comments must be received on or before July 19, 2004.

ADDRESSES: Send all comments on the proposed technical standard order to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Mr. Richard Jennings. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Jennings, Federal Aviation Administration, c/o Atlanta Aircraft Certification Office, 1895 Phoenix Blvd., Suite 450, Atlanta, GA 30349. Telephone (770) 703–6090, FAX: (770) 703–6055.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed TSO may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building, 800 Independence Avenue, SW.,

Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

This TSO prescribes the minimum performance standards for night vision goggle equipment intended to provide the aircraft operator with a means of acquiring an enhanced view of the scene outside the aircraft in night visual meteorological conditions (VMC) operations, under current Title 14 CFR 91.155 basic visual flight rules (VFR) weather minimums, thus enhancing situation awareness. The equipment is portable (*i.e.*, battery powered), with no interface to aircraft systems.

How To Obtain Copies

You may get a copy of the proposed TSO from the Internet at: *http://av-info.faa.gov/tso.Tsopro/Proposed.htm.* See section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address if requesting a copy by mail. You may inspect the RTCA document at the FAA office location listed under **ADDRESSES**. Note however, RTCA documents are copyrighted and may not be reproduced without the written consent of RTCA, Inc. You may purchase copies of RTCA, Inc. documents from: RTCA, Inc., 1828 L Street, NW., Suite 815, Washington, DC 20036, or directly from their Web site *http://www.rtca.org/*.

Issued in Washington, DC, on June 14, 2004.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 04–13717 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–17984]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice publishes the FMCSA's receipt of applications from 30 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before July 19, 2004.

ADDRESSES: You may submit comments identified by any of the following methods. Please identify your comments by the DOT DMS Docket Number FMCSA–2004–17984.

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Doggett, Office of Bus and Truck Standards and Operations, (202) 366–2990, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Public Participation:* The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the ''help'' section of the DMS web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: 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 the Department of Transportation'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.*

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the agency to renew exemptions at the end of the 2-year period. The 30 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statute.

Qualifications of Applicants

1. Robert L. Aurandt

Mr. Aurandt, 51, has amblyopia in his right eye. His visual acuity in the right eye is 20/100 and in the left, 20/20. Following an examination in 2004, his ophthalmologist certified, ''As far as I can see, there is no evidence on his examination or driving record to suggest that he should not be able to continue commercial driving.'' Mr. Aurandt reported that he has driven straight trucks for 5 years, accumulating 73,500 miles, and tractor-trailer combinations for 8 years, accumulating 1.1 million miles. He holds a Class AM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and two convictions for speeding in a CMV. He exceeded the speed limit by 16 mph in one instance and 10 mph in the other.

2. Harry R. Brewer

Mr. Brewer, 40, has a macular scar in his left eye due to trauma 20 years ago. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/80. Following an examination in 2004, his optometrist certified, ''Although Mr. Brewer has a central defect in his left eye, it is important to bear in mind that he has overlapping visual fields from his right eye. His vision is limited in the left eye, but I do not feel that it will affect his ability to drive a commercial vehicle.'' Mr. Brewer reported that he has driven tractor-trailer combinations for 8 years, accumulating 640,000 miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

3. Wilford F. Christian

Mr. Christian, 65, has had macular degeneration in his left eye since 1996. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/400. Following an examination in 2004, his ophthalmologist certified, ''Because of the stability of Mr. Christian's condition, the absence of ocular pathology in the right eye, full visual fields in each eye, and normal functioning central vision with both eyes when binocular in the distance, I do not see anything that should limit his ability to operate a commercial vehicle.'' Mr. Christian reported that he has driven tractor-trailer combinations for 14 years, accumulating 1.4 million miles. He holds a driver's license from Virginia, but at the time of his application he held a Class A CDL, now expired. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 9 mph.

4. Timothy A. DeFrange

Mr. DeFrange, 35, has had reduced vision in his right eye since age 12 due to trauma. His visual acuity in the right eye is 20/1600 and in the left, 20/20. Following an examination in 2004, his optometrist certified, ''It is my professional opinion that Mr. DeFrange has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. DeFrange submitted that he has driven straight trucks and tractor-trailer combinations for 6 years, accumulating 6,000 miles in the former and 600,000 miles in the latter. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

5. Terry G. Dickson, Sr.

Mr. Dickson, 53, has amblyopia in his right eye. The best-corrected visual acuity in his right eye is 20/1000 and in the left, 20/20. Following an examination in 2003, his optometrist stated, ''I certify in my medical opinion that Mr. Dickson has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Dickson reported that he has driven tractor-trailer combinations for 32 years, accumulating 3.3 million miles. He holds a Class A CDL from Ohio. His driving record shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 10 mph.

6. Clarence N. Florey, Jr.

Mr. Florey, 42, has amblyopia in his left eye. The visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2004, his ophthalmologist certified, ''In my medical opinion, Mr. Florey has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Florey submitted that he has driven straight trucks for 16 years, accumulating 100,000 miles. He holds a Class AM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

7. Bobby C. Floyd

Mr. Floyd, 45, has amblyopia in his right eye. The best-corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2003, his optometrist stated, ''It is my medical opinion that Mr. Floyd has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Floyd reported that he has driven tractor-trailer combinations for 23 years, accumulating 2.8 million miles. He holds a Class A CDL from Tennessee. His driving record shows no crashes or convictions for moving violations in a CMV during the last 3 years.

8. Steve H. Garrison

Mr. Garrison, 40, lost his left eye 16 years ago due to trauma. His visual acuity in the right eye is 20/10. Following an examination in 2003, his ophthalmologist certified, ''He has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Garrison reported that he has driven tractor-trailer combinations for 20 years, accumulating 260,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

9. Ronald A. Gentry

Mr. Gentry, 44, lost his right eye due to trauma at age 14. The visual acuity in his left eye is 20/20. Following an examination in 2004, his optometrist stated, ''I am hereby certifying that Ronald has sufficient vision to continue driving a commercial vehicle both in state and out of state.'' Mr. Gentry submitted that he has driven tractor-trailer combinations for 5 years, accumulating 230,000 miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

10. Scott D. Goalder

Mr. Goalder, 43, lost his right eye due to trauma in 1978. The visual acuity in his left eye is 20/20. Following an examination in 2003, his optometrist certified, ''It is my medical opinion that he has the necessary vision that is compatible with being licensed to drive a commercial vehicle.'' Mr. Goalder submitted that he has driven straight trucks for 4 years, accumulating 220,000 miles, and tractor-trailer combinations for 20 years, accumulating 2.8 million miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—''traffic turn/signal violation''—in a CMV.

11. Raymond P. Gonzales

Mr. Gonzales, 45, has retinal scarring in his right eye due to trauma in 1976. The best-corrected visual acuity in his right eye is 20/200 and in the left, 20/20. His optometrist examined him in 2004 and stated, ''In my opinion, Mr. Gonzales has sufficient vision to safely operate a commercial vehicle.'' Mr. Gonzales reported that he has driven buses for 25 years, accumulating 625,000 miles. He holds a Class B CDL from New Mexico. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

12. David M. Hagadorn

Mr. Hagadorn, 37, has amblyopia in his left eye. The visual acuity in his right eye is 20/20 and in the left, 20/100. His optometrist examined him in 2003 and stated, ''It is my professional opinion that Mr. Hagadorn has sufficient vision and peripheral vision to operate a commercial vehicle.'' Mr. Hagadorn reported that he has driven straight trucks for 7 years, accumulating 210,000 miles. He holds a Class D driver's license from New Jersey. His driving record for the last 3 years shows

no crashes or convictions for moving violations in a CMV.

13. Donald R. Hiltz

Mr. Hiltz, 62, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/25 and in the left, 20/50. Following an examination in 2003, his ophthalmologist certified, ''In my medical opinion, Mr. Hiltz has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hiltz reported that he has driven straight trucks for 43 years, accumulating 860,000 miles, and tractor-trailer combinations for 31 years, accumulating 310,000 miles. He holds a Class AM CDL from Massachusetts. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

14. James L. Hooks

Mr. Hooks, 43, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/15 and in the left, 20/70. Following an examination in 2003, his optometrist certified, ''I feel he has sufficient visual performance to operate a commercial vehicle.'' Mr. Hooks reported that he has driven straight trucks for 5 years, accumulating 225,000 miles. He holds a Class R driver's license from Colorado. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

15. Francisco J. Jimenez

Mr. Jimenez, 45, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is counting fingers and in the left, 20/20. Following an examination in 2004, his optometrist certified, ''I see no reason for restricting Mr. Jimenez's commercial license except that he should wear glasses when he is driving.'' Mr. Jimenez reported that he has driven straight trucks for 6 years, accumulating 198,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

16. Kelly R. Konesky

Mr. Konesky, 46, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/200. Following an examination in 2003, his ophthalmologist certified, ''His driving abilities continue to demonstrate an excellent safety record, with no medical reason to restrict his driving a commercial vehicle.'' Mr. Konesky reported that he has driven tractor-trailer combinations for 23 years, accumulating 2.3 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

17. Gregory T. Lingard

Mr. Lingard, 56, has had keratoconus in his right eye since he was a teenager. The visual acuity in his right eye is 20/100 and in the left, 20/20. His ophthalmologist examined him in 2004 and stated, ''In my medical opinion, Mr. Lingard has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Lingard reported that he has driven straight trucks for 4 years, accumulating 120,000 miles, and tractor-trailer combinations for 35 years, accumulating 3.5 million miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

18. Hollis J. Martin

Mr. Martin, 43, has amblyopia in his right eye due to a childhood injury. The visual acuity in his right eye is 20/400 and in the left, 20/20. His optometrist examined him in 2003 and certified, ''In my medical opinion, Mr. Martin has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Martin submitted that he has driven straight trucks for 11 years, accumulating 200,000 miles, and tractor-trailer combinations for 6 years, accumulating 73,000 miles. He holds a Class A CDL from Alabama. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

19. Truman J. Mathis

Mr. Mathis, 64, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/200. His optometrist examined him in 2003 and certified, ''Mr. Mathis has adequate visual skills for commercial vehicle driving.'' Mr. Mathis reported that he has driven tractor-trailer combinations for 17 years, accumulating 1.9 million miles. He holds a Class A CDL from the State of Washington. His driving record shows no crashes or convictions for moving violations in a CMV during the last 3 years.

20. Robert E. Moore

Mr. Moore, 45, lost vision in his right eye as a child due to congenital glaucoma. His visual acuity in the left eye is 20/20. Following an examination in 2003, his optometrist certified, ''In my medical opinion Mr. Moore has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Moore reported that he has driven straight trucks for 15 years, accumulating 150,000 miles. He holds a Class BM CDL from Alabama. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

21. Kevin C. Palmer

Mr. Palmer, 43, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/15 and in the left, 20/80. Following an examination in 2004, his ophthalmologist certified, ''In my opinion, Mr. Palmer's condition is stable and he has sufficient visual acuity and visual field to perform the driving tasks required of him to operate a commercial vehicle.'' Mr. Palmer reported that he has driven tractor-trailer combinations for 16 years, accumulating 400,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

22. Charles O. Rhodes

Mr. Rhodes, 35, has glaucoma in his left eye, secondary to trauma at age 10. The visual acuity in his right eye is 20/20 and in the left, light perception. Following an examination in 2003, his ophthalmologist stated, ''This certifies that in my medical opinion, Mr. Charles O. Rhodes has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Rhodes reported that he has driven straight trucks for 3 years, accumulating 60,000 miles. He holds a Class D driver's license from Florida. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 25 mph.

23. Einar H. Rice

Mr. Rice, 47, has amblyopia in his right eye. The best-corrected visual acuity in his right eye is 20/60 and in the left, 20/20. His optometrist examined him in 2003 and stated, ''In my medical opinion, Mr. Rice has sufficient vision to perform the necessary tasks to operate a commercial vehicle.'' Mr. Rice submitted that he has driven straight trucks for 6 years, accumulating 120,000 miles, and buses for 17 years, accumulating 425,000 miles. He holds a Class BM CDL from Nevada. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

24. Gordon G. Roth

Mr. Roth, 47, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/60. His ophthalmologist examined him in 2003 and stated, ''It is my opinion

that the patient has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Roth submitted that he has driven straight trucks for 20 years; accumulating 200,000 miles, tractor-trailer combinations for 4 years, accumulating 100,000 miles, and buses for 6 years, accumulating 48,000 miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

25. Manuel Sanchez

Mr. Sanchez, 44, has finger counting vision in his left eye due to an injury at the age of 8. The best-corrected visual acuity in his right eye is 20/20. Following an examination in 2004, his optometrist certified, ''In my medical opinion, Mr. Sanchez has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sanchez reported that he has driven straight trucks and tractor-trailer combinations for 5 years, accumulating 685,000 miles in each. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

26. Chris H. Schultz

Mr. Schultz, 45, has had a cataract in his right eye for 41 years. His best-corrected visual acuity in the right eye is 20/400 and in the left, 20/20. Following an examination in 2004, his optometrist certified, ''In my professional opinion, I feel that Chris has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Schultz reported that he has driven vehicles requiring placarding for hazardous materials for 4 years, accumulating 168,000 miles. He holds a Class C CDL from Utah. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

27. Halman Smith

Mr. Smith, 46, lost the vision in his left eye due to trauma 10 years ago. The visual acuity in his right eye is 20/20. His ophthalmologist examined him in 2004 and stated, ''I certify that Mr. Halman Smith has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Smith reported that he has driven straight trucks for 15 years, accumulating 375,000 miles. He holds a Class B CDL from Delaware. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

28. Norman K. Stepleton

Mr. Stepleton, 71, has amblyopia in his right eye. His visual acuity in the right eye is 20/400 and in the left, 20/20. Following an examination in 2003, his ophthalmologist certified, ''My opinion is that you are visually capable of safely operating a commercial vehicle.'' Mr. Stepleton reported that he has driven straight trucks for 52 years, accumulating 1.5 million miles. He holds a Class B CDL from Iowa. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

29. LaLanne Taylor

Mr. Taylor, 55, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/25 and in the left, 20/100. Following an examination in 2003, his optometrist certified, ''I do believe he has necessary vision to operate a commercial vehicle as he has done for many years.'' Mr. Taylor reported that he has driven straight trucks for 8 years, accumulating 440,000 miles. He holds a Class D driver's license from Ohio. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV. According to the police report, another driver sideswiped Mr. Taylor's vehicle while changing lanes. The other driver was cited for ''change course.'' Mr. Taylor was not cited.

30. James A. Walker

Mr. Walker, 47, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/300 and in the left, 20/20. Following an examination in 2004, his optometrist noted that Mr. Walker has ''sufficient vision to perform commercial vehicle driving tasks.'' Mr. Walker reported that he has driven straight trucks for 25 years, accumulating 125,000 miles, and tractor-trailer combinations for 7 years, accumulating 910,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: June 7, 2004.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 04–13719 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No.–2004–18066]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DANA A.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–18066 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before July 19, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 18066. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments

will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DANA A is:

Intended Use: ''Pleasure Carter.''

Geographic Region: ''East and Gulf Coasts of the US.''

Dated: June 10, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–13643 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004–18070]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FREE N CLEAR.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–18070 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 19, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–18070. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FREE N CLEAR is:

Intended Use: ''Coastwise charter service.''

Geographic Region: ''SE United States and Bahamas.''

Dated: June 10, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–13647 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004–18073]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ISLAND PARADISE.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–18073 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before July 19, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–18073. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ISLAND PARADISE is:

Intended Use: ''Day/Overnight Charter.''

Geographic Region: ''RI, CT, MA, NY and Florida waters.''

Dated: June 10, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–13644 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004–18069]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ISLE OF CREOLA.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–18069 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 19, 2004.

ADDRESSES: Comments should refer to docket number MARAD 2004–18069. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ISLE OF CREOLA is:

Intended Use: ''Day and overnight trips.''

Geographic Region: ''Florida Coast.''

Dated: June 10, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–13648 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004–18068]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel OFF CALL.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–18068 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 19, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–18068. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OFF CALL is:

Intended Use: ''Day and overnight sailing charters.''

Geographic Region: ''East coast of the United States.

Dated: June 10, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–13649 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004 18072]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of

the Coastwise Trade Laws for the vessel OSPREY.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–18072 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before July 19, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–18072. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OSPREY is:

Intended Use: ''Sailing charters.''

Geographic Region: ''Near coastal waters of the Gulf of Alaska and all inland waters connected therewith.

Dated: June 10, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Martime Administration.

[FR Doc. 04–13645 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004–18067]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SEA HAWK.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–18067 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 19, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 18067. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SEA HAWK is:

Intended Use: ''Charter fishing.''

Geographic Region: ''Great Lakes.''

Dated: June 10, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–13650 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004–18071]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel WILLIAM H ALBURY.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–18071 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003),

that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 19, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–18071. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WILLIAM H ALBURY is:

Intended Use: ''Sail training/Private sailing charters.''

Geographic Region: ''Southeast Florida.''

Dated: June 10, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–13646 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on February 26, 2004 (69 FR 9015).

Comments: Comments should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Type of Request: Extension of a currently approved collection.

Form Number: This collection of information uses no standard forms.

DATES: Comments must be submitted on or before July 19, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Kido, National Highway Traffic Safety Administration, Office of the Chief Counsel (NCC–111), (202) 366–5263, 400 Seventh Street, SW., Room 5219, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Criminal Penalty Safe Harbor Provision.

OMB Control Number: 2127–0609.

Frequency: We believe that there will be very few criminal prosecutions under section 30170, given its elements. Accordingly, it is not likely to be a substantial motivating force for a submission of a corrected report in response to an agency request for information. See Summary of the Collection of Information below. Based on our experience to date, we estimate that no more than 1 person per year would be subject to this collection of information, and we do not anticipate receiving more than one report a year from any particular person.

Affected Public: This collection of information would apply to any person who seeks a ''safe harbor'' from potential criminal liability under 49 U.S.C. 30170. Thus, the collection of information could apply to the manufacturers, any officers or employees thereof, and other persons who respond or have a duty to respond to an information provision requirement pursuant to 49 U.S.C. 30166 or a regulation, requirement, request or order issued thereunder.

Abstract: NHTSA has published a final rule related to ''reasonable time'' and sufficient manner of ''correction,'' as they apply to the safe harbor from criminal penalties, as required by Section 5 of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414), which was enacted on November 1, 2000. 65 FR 38380 (July 24, 2001).

Estimated Annual Burden: Using the above estimate of 1 affected person a year, with an estimated two hours of preparation to collect and provide the information, at an assumed rate of $25 an hour, the annual, estimated cost of collecting and preparing the information necessary for 1 complete ''safe harbor'' corrections is about $50. Adding in a postage cost of $0.37 (1 report at a cost of 37 cents to mail each one), we estimate that it will cost $50.37 a year for persons to prepare and submit the information necessary to satisfy the safe harbor provision of 49 U.S.C. 30170.

Since nothing in this rule would require those persons who submit reports pursuant to this rule to keep copies of any records or reports submitted to us, the cost imposed to keep records would be zero hours and zero costs.

Number of Respondents: We estimate that there will be no more than 1 per year.

Summary of the Collection of Information: Any person seeking protection from criminal liability under 49 U.S.C. 30170 related to an improper report or failure to report pursuant to 49 U.S.C. 30166, or a regulation, requirement, request or order issued thereunder, will be required to report the following information to NHTSA: (1) Each previous improper item of information or document and each failure to report that was required under 49 U.S.C. 30166, or a regulation, requirement, request or order issued thereunder, (2) the specific predicate under which each improper or omitted report should have been provided, and (3) the complete and correct reports, including all information that was improperly submitted or that should have been submitted and all relevant documents that were not previously submitted to NHTSA or, if the person cannot provide this, then a full detailed description of that information or of the content of those documents and the reason why the individual cannot provide them to NHTSA.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on June 10, 2004.

Jacqueline Glassman,

Chief Counsel.

[FR Doc. 04–13610 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreement To Support the Demonstration of a Model Impaired Driving Records Information System

AGENCY: DOT, National Highway Traffic Safety Administration (NHTSA).

ACTION: Announcement of a discretionary cooperative agreement opportunity to support the demonstration of a model impaired driving records information system and to evaluate its efficiency and effectiveness.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement opportunity to solicit support for the demonstration of a model impaired driving records information system and to evaluate its efficiency and effectiveness. NHTSA is concerned that without a current and accurate record of driver information, it is difficult for law enforcement agencies, licensing agencies, the criminal justice system, and others to make sound decisions on how to respond to and take the appropriate action against drivers demonstrating unsafe behavior on the roadways. NHTSA solicits applicable State agencies (*i.e.*, law enforcement agencies, the judiciary (judges, probation officers and prosecutors), Motor Vehicle Administrations or Departments of Motor Vehicles (DMVs), highway safety offices, and others, or a consortium of the above.

DATES: Applications must be received no later than July 20, 2004, at 1 p.m., eastern standard time.

ADDRESSES: Applications must be submitted to the U.S Department of Transportation, National Highway Traffic Safety Administration, Office of Contracts and Procurement (NPO–220), ATTN: April L. Jennings, 400 Seventh Street, SW., Room 5301, Washington, DC 20590. All applications must include reference to NHTSA Cooperative Agreement Number DTNH22–04–H–05110.

FOR FURTHER INFORMATION CONTACT: Questions may be directed to Ms. April L. Jennings, Office of Contracts and Procurement, NPO–220, 400 Seventh Street, SW., 20590 by e-mail (preferred method) at *April.Jennings@NHTSA.DOT.GOV* or by phone at (202) 366–9571. Interested parties are advised that no separate application packages exist beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

The mission of the National Highway Traffic Safety Administration (NHTSA) is to reduce deaths, injuries, and economic losses resulting from motor vehicle crashes. Each year, more than 1.4 million drivers are arrested for alcohol-impaired driving in the U.S. States bear the primary responsibility for enacting impaired driving laws and enforcing, adjudicating, and imposing sanctions against offenses. The driver license and licensing process provides a basis for driver control measures. During the 1950's, all States implemented an examination with road test as a condition of obtaining a driver license. License actions have become a central component of efforts to deter drinking and driving. Driver license sanctions are now almost universally used either administratively or through the judicial system. The effects of license suspension/revocation are short and long-term. The loss of the offender's privilege to drive by suspending or revoking a license for driving while intoxicated (DWI) has proven successful in reducing drinking and driving behavior. Although vehicle-based sanctions (*e.g.*, ignition interlock devices and the forfeiture, or impoundment of offenders' vehicles) hold great promise as deterrent measures, States rely heavily on removal of the offender's license as a primary penalty for DWI, because it is the most cost-effective sanction available, particularly when applied to first-time offenders.

There are also instances in some States where license withdrawal is required as a penalty for offenses that lie outside the ambit of typical motor vehicle laws (*e.g.*, use of a motor vehicle in the commission of a felony, motor vehicle theft, discharging a firearm from a motor vehicle, committing an immoral act in which a motor vehicle was used, advocating the overthrow of the government, defacing public or private property, non-payment of child support, withdrawal from high school, and illegal use of alcohol and other drugs). Often these violations and other driver history information are not transmitted to relevant agencies within state jurisdictions or between the States. This omission hinders roadside enforcement, the identification of problem drivers, and ultimately, the safety of others.

While the transmission of this type of information is critical, it must be timely, accurate, reliable, and complete to be effective. Timely and accurate information is essential to the adjudication process. Decisions regarding licensing actions and penalties need to be based on an individual's complete driving history. Persons previously convicted of a variety of traffic offenses and violations should be sanctioned differently than those with no or otherwise minor traffic offenses. A fully developed driver history records information system for impaired driving would be a powerful tool for States to assist in developing an effective system of deterrence for the impaired driver. Yet, few States have such a system. For example, delays in reporting or exchanging information regarding the disposition of traffic citations between the courts and licensing agencies commonly last six months or longer—sufficient time for a driver to commit additional traffic offenses. ''At-risk'' drivers continue to drive virtually undetected, putting others at risk of death, injury, or loss of property.

NHTSA is concerned that without a current and accurate record of driver information, it is difficult for law enforcement agencies, licensing agencies and others in the criminal justice system to make sound decisions on how to respond to drivers demonstrating unsafe behavior on the roadways. To correct this deficiency, NHTSA developed a model for an Impaired Driving Records Information System and an implementation guide that allows for accurate, reliable, and timely exchange and transmission of data between the law enforcement agencies, the courts, and the DMVs. In addition, model requirements identify core and essential data elements,

relevant records, and performance standards to receive, store, and transmit data.

Many states have some form of a judiciary-based citation or case-based impaired driving tracking system. However, as states have increasingly enacted administrative license and vehicle sanctions for impaired driving, DMVs have taken on an increasingly important role in managing these sanctions through the driver licensing systems. With the advent of electronic citation systems and technologies that allow immediate access by patrol officers to driver license and vehicle registration information, enforcement agencies also have an increasingly important role in developing and managing an Impaired Driving Records Information System. The system includes impaired driving-related information that is collected and managed by the system's stakeholders. Key system stakeholders in all states include law enforcement agencies, the criminal justice system (*i.e.*, judges, probation officers, and prosecutors), DMVs, and highway safety offices. Within most states, other stakeholders may include treatment and correctional agencies, which may also maintain offender-based information systems. A model was developed for implementation within and among states for use as a collective resource and to curb the installation of costly and duplicative record systems.

The project under this cooperative agreement encompasses the totality of a State's efforts to generate, transmit, store, update, link, manage, report, and retrieve information on impaired driving offenders and citations. Through the use of up-to-date technology and cooperative arrangements between the stakeholders, a Model Impaired Driving Records Information System provides for electronic access to driver history and vehicle information, electronic collection of data, electronic transmission of data between stakeholders, and on-line access to complete, accurate, and timely information on impaired driving cases. The system must provide access, as required, by all key stakeholders and address their needs.

In 2002, under a similar solicitation, four States (Alabama, Iowa, Nebraska, and Wisconsin) were selected to demonstrate a Model Impaired Driving Records Information System.

Objective

The objective of this demonstration, as with the 2002 demonstration efforts, is for States to implement a Model Impaired Driving Records Information System (for model requirements, see section titled: Model Impaired Driving Records Information System Requirements) and evaluate its efficiency and effectiveness. A Model Impaired Driving Records Information System enables a State to effectively perform the following functions:

(1) Appropriately identify, charge and sanction impaired driving offenders, based on their driving history;

(2) Manage impaired driving cases from arrest through the completion of court and administrative sanctions;

(3) Identify target populations and trends, evaluate countermeasures, and identify problematic components of the overall impaired driving control system;

(4) Provide stakeholders with adequate and timely information necessary to fulfill their responsibilities; and

(5) Reduce administrative costs for system stakeholders and increase system efficiencies. While this effort is directed at impaired drivers, it is understood that data on the behavior of all problem drivers will result from use of such a system.

Availability of Funds and Period of Support

A total of $2 million is currently available to support demonstration efforts. The government reserves the right to award one or more cooperative agreement(s) for a total performance period not to exceed 2 years. Offerors should submit projects and associated budgets for the 2 years of the performance period. The maximum dollar amount for any single award is set at $2 million.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of each cooperative agreement and to coordinate activities between the Grantee(s) and NHTSA.

2. Provide information and technical assistance from other government sources and available resources as determined appropriate by the COTR.

3. Serve as a liaison between NHTSA Headquarters, Regional Offices, and other (Federal, State, and local agencies) interested in a Model Impaired Driving Records Information System, and the Grantee(s) as appropriate.

4. Stimulate the transfer of information among cooperative agreement recipients and others engaged in alcohol program activities, specifically designed to address driver history records and impaired driving information systems.

5. Review and approve draft and final versions of the deliverables.

Eligibility Requirements

Applicants are limited to key State agencies (*e.g.*, law enforcement agencies, Department of Motor Vehicle Administrations, highway safety offices, and other applicable State agencies or a consortium of the above). To be deemed eligible, each application package must include a letter of endorsement from the Governor's Highway Safety Representative and a letter of cooperation and participation from key system stakeholders, including at a minimum: the State Supreme Court Administrator; the Administrator of the DMV; and the State Police, and the State Association of Chief's of Police (SACOP). The SACOP must agree to solicit the support of the local law enforcement agencies to also participate in this project. Interested applicants are advised that no fee or profit will be allowed under this cooperative agreement program.

Application Procedures

Each applicant must submit one original and three copies of the application package to: National Highway Traffic Safety Administration, Office of Contracts and Procurement (NPO–220), Attn: April L. Jennings, 400 Seventh Street SW., Room 5301, Washington, DC 20590. Submission of four (4) additional copies will expedite processing, but is not required. The application may be single spaced, must be typed on one side of the page only, and must include reference to NHTSA Cooperative Agreement Number DTNH22–04–H–05110. Unnecessarily elaborate applications beyond what is sufficient to present a complete and effective response to this invitation are not desired. Only complete application packages received on or before due date, (July 20, 2004) will be considered.

Application Contents

1. The application package must be submitted with OMB Standard Form (SF) 424 (Rev. 9–2003, including 424A and 424B) Application for Federal Assistance, with the required information filled in and certifications and assurances signed. OMB forms are available for downloading and printing on the Internet at: *http://www.whitehouse.gov/OMB/grants/index.html* site. While the SF 424A deals with budget information, and Section B identifies Budget Categories, the available space does not permit a

level of detail sufficient to provide meaningful evaluation of the proposed total costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs, as well as any costs, which the applicant indicates will be contributed locally as matching funds, in support of the demonstration project.

2. In addition to the documents listed above, the applicant must include a project narrative statement, which provides the following information in separately labeled sections with its submission:

(a) A summary of State DWI laws and processes.

(b) The identity of major stakeholders in the State's impaired driving system (include the court system and indicate whether it is unified or not). Describe each stakeholder's existing system for collecting and transmitting impaired driving information, including system components and capabilities, its strengths, deficiencies, and any improvements planned or underway.

(c) A description of the current degree of uniformity within and across agencies in collecting and managing information, (*i.e.*, among the courts, enforcement agencies, and DMVs). Describe the existing citation information flow-process from law enforcement to the prosecutors/courts to the State DMV. This must include identification of specific problems that delay or hinder the citation information flow-process. Include whether or not all or some enforcement agencies use a uniform traffic ticket (UTT) or uniform citation form (*i.e.*, either an identical form or a form with exactly the same data elements). If different citation forms are used, describe the differences and the impact those differences might have on tracking citations through the court system(s) to the DMVs. Similarly, include whether or not all courts or some courts use the same forms and/or terminology.

(d) Evidence of any systematic assessment or documentation of the impaired driving information system, including a Traffic Records Assessment, and any long-term improvement plans.

(e) A description of the extent to which the State currently meets the ten specific features of the model system (identified in the ''Model Impaired Driving Records Information System Requirements'' section of this announcement) and challenges and/or barriers.

(f) A detailed project plan, including timetables and milestones.

(g) Describe the project plan's improvements/innovations in detail and explain what percent of the state's system will be affected (*e.g.*, all courts, half of enforcement agencies, etc.). Explain how each specific feature of the plan will be addressed by each system improvement/innovation. Explain how the proposal fits into the State's long-term plans for improving information systems.

(h) A list of specific innovations to hardware or software and methods to be employed, including costs.

(i) Identification of a designated lead agency and project director. The application shall identify the proposed project director and any personnel considered critical to the successful documentation of the proposed project. Describe the roles and responsibilities of each and describe the roles and responsibilities of each stakeholder agency.

(j) Specify a mechanism for ensuring participation or buy-in of the stakeholders throughout the project (*e.g.*, an interagency advisory board).

(k) The proposed level of effort in performing various activities shall also be identified. A staffing plan and resume for all key project personnel shall be included in the application. Briefly outline the organizational resources and specify funds the applicant will draw upon, and how the applicant will provide the project management capability and personnel expertise to successfully perform the activities stated herein. Include staffing titles and a 1–2 sentence description of the position duties. The budget should segregate documentation project costs from implementation and evaluation costs, and how the funds should be allocated.

(l) Provide a budget for performance of this cooperative agreement effort. The budget shall be presented in two forms:

(i) For each activity, the applicant shall provide the total direct labor, travel, other direct costs, and indirect costs.

(ii) The Applicant shall also provide a detailed budget that further breaks down the general cost categories of direct labor, travel, other direct costs and indirect costs. For direct labor, the applicant must present the labor categories, hourly rate (or pro-rated annual salary), level of effort (*i.e.* manhours) and documentation supporting those costs. For travel and other direct costs, the offeror must explain how it arrived at the proposed costs and what assumptions were made in calculating those costs. Supporting documentation (*e.g.* vender quotes, etc.) should be provided. For indirect costs, the applicant should identify the basis for costs (*e.g.* If indirect cost rates have been audited and approved by another government agency, the applicant should provide details). The estimated costs should be separated and proposed by year (*i.e.* A twelve-month proposed period of performance shall require one budget; A proposed period of performance in excess of twelve months shall include one budget for the initial twelve months and a second budget for the period requested in excess of twelve months).

(m) Clearly identify any financial resources by the applicant organization or other supporting organizations to support the project. Among equally rated proposals, preference will be given to applicants with matching state funds.

(n) Letters of endorsement from the key stakeholder agencies that clearly state their buy-in and cooperation. Include the DMV, the State Supreme Court Administrators (or lower court equivalent), and State Police/Highway Patrol, including the SACOP.

(o) Evidence that the State has had a history of supporting improvements to the impaired driving information system and using up-to-date technologies and innovations.

(p) Past Performance and Financial Responsibility. To evaluate this information adequately, the Applicant shall provide the following information:

(i) Identify at least three references who can attest to the past performance history and quality of work provided by the Applicant on previous assistance agreements and/or contracts. In doing so, the Applicant shall provide the following information for each reference:

(a) Assistance Agreement/Contract Number;

(b) Title and brief description of Assistance Agreement/Contract;

(c) Name of organization, name of point of contact, telephone number, and e-mail address of point of contact at the organization with which the Applicant entered into an Assistance Agreement/ Contract;

(d) Dollar value of Assistance Agreement/ Contract;

(e) Any additional information, which the Applicant may provide to address the issue of past performance and financial responsibility.

(ii) The Applicant shall indicate if it has ever appeared on the General Service Administration's (GSA) List of Parties Excluded From Federal Procurement and Nonprocurement Programs or on GSA's ''Excluded Parties List.'' If so, the Applicant shall discuss the circumstances leading up to its inclusion in either of these listings and its current status to enter into Assistance Agreements and/or Contracts.

(iii) The Applicant shall indicate if it has ever filed for bankruptcy, or has had any financial problems, which may affect, negatively, its ability to perform under this Assistance Agreement.

Model Impaired Driving Records Information System Requirements

The Model Impaired Driving Records Information System that applicants are expected to implement under this program contain elements that provide for the following five functions: (1) Tracking each impaired driving offender from arrest through dismissal or sentence completion; (2) providing aggregate data, for example, numbers of arrests, convictions, BAC distribution, and offender demographics; (3) conforming to national standards and system performance standards; (4) ensuring that data is accurate, complete, and reliable; and (5) maintaining quality control and security features that will prevent core and essential data elements and/or impaired driving records from being compromised or corrupted.

The model system has the following ten specific features.

(1) Statewide coverage (*i.e.*, DMV, all courts adjudicating impaired driving cases, all law enforcement agencies).

(2) ''Real-time'' electronic access—the ability of law enforcement officers, DMVs, and the courts, including judges and prosecutors, to directly access driver license history information (*e.g.*, license history and current status; vehicle registration status; applicable criminal history, and outstanding warrants) intrastate and potentially interstate, without relying on a dispatcher or other intermediary.

(3) An electronic citation system that is used by officers at the roadside and/or at the police station and that supports the use of bar-code, magnetic striping, or other technologies to automatically capture driver license and registration information on the citation and other standard legal forms, such as an implied consent form.

(4) A citation tracking system that accepts electronic citation data (and other standard legal forms) from enforcement agencies; provides real-time tracking from the distribution of citation forms, to issuance by police officers, through final adjudication, and the imposition and completion of administrative and judicial sanctions; provides access by citation number and by offender; and allows on-line access by stakeholders.

(5) Immediate electronic transmission of data from enforcement agencies and the judicial process to the driver license system to permit immediate and automatic imposition of administrative sanctions, if applicable, and the recordation of convictions on the driver license.

(6) Electronic reporting to the courts and DMVs by probation, treatment, or correctional agencies, as applicable, with regard to compliance or non-compliance with administrative or court sanctions.

(7) Linkage of information from the incident/case tracking system and the offender-based DMV license, treatment, and probation systems to develop a complete record for each offender, including driver history.

(8) Timely access by all stakeholders, including the highway safety office, periodic to statistical reports needed to support agency operations and to manage the impaired driving control system, identify trends, and support problem identification, policy development, and evaluation of countermeasures.

(9) Flexibility to include additional data and technological innovations.

(10) Compliance with national standards developed by, for example, the American Association of Motor Vehicle Administrators (AAMVA) and the National Crime Information Center (NCIC).

The core data elements in the system include the following:

- Driver identifying information to include: Name, address, driver license number, date of birth, and physical characteristics (*i.e.*, gender, height, eye color, etc.)
- Driver license class and endorsements, status (valid, suspended, revoked, cancelled, hardship, commercial driver license (CDL), etc.), and restrictions
- Vehicle license plate number and state of registration, status (*e.g.*, registered, impounded, stolen), Vehicle Identification Number (VIN), and DOT carrier identification number for commercial vehicles
- Relevant criminal history
- Outstanding warrants and other administrative actions
- In accordance with state policies for posting and retaining information on the driver record, offender's history or prior non-impaired driving traffic convictions and associated penalties, impaired driving convictions and/or pre-conviction administrative actions and associated penalties, crashes, current accumulated license penalty points, and administrative license actions
- Outstanding citations or arrests
- Arrest/citation information
  - Citation number(s), date, time of day, roadway location and jurisdiction
  - Arresting officer (LEA identifier)
  - Violation(s) charged
  - Crash involvement, severity, number of passengers
  - Alcohol test result: refusal, alcohol concentration (blood, breath, or other), or missing
  - Drug test result: refusal, drugs detected, or missing
  - Results of Standardized Field Sobriety Tests and other field tests, as applicable
- Pre-conviction administrative license and vehicle penalties imposed
  - Type and length of sanction
  - Date imposed
- Prosecution/adjudication data
  - Court case identifier and specific identifiers for the court, judge, and jurisdiction
  - Date of arraignment
  - Date of disposition
  - Completion or non-completion of pre-conviction or pre-sentence deferral program (court deferred sentencing or conviction pending offender's completion of alcohol or other drug treatment program and/or other conditions)
  - Final disposition of charge (dismissed, acquitted, plea to reduced charge (specify), convicted of original charge after trial, diversion program, adjournment in contemplation of dismissal, pending, etc.)
  - Court penalties imposed (jail sentence, fines and penalties, probation, substance abuse assessment/treatment, ignition interlock device, community service, house arrest, dollar amount of fines, fees, and for victim restitution, vehicle forfeiture, license revocation or suspension, and other)
  - Probation report and/or pre-sentence assessment information, if applicable by law
- Subsequent violations, including driving while suspended/revoked, during license suspension period and resulting penalties
- Completion of treatment/assessment (start and finish dates)
- Completion/non-completion of court and/or administrative sanctions
- Penalties for failure to complete court and/or administrative sanctions or violations of probation, including license suspension/revocation
- Whether license reinstated and if so, date of reinstatement

A Model Impaired Driving Information system represents a collective effort involving DMVs, law enforcement agencies, the courts, and other agency stakeholders to ensure each organization

has ready access to the information needed to plan and manage its work effectively and efficiently. The system also enables the highway safety office, the legislature, and other legitimate users in the highway safety community to obtain periodic and special statistical reports on the impaired driving system. The following are examples of the types of data that would be periodically generated or available on an ad hoc basis through a user-friendly protocol to the extent that state laws and policies permit:

- Referral rates to treatment statewide, by jurisdiction, and court and rate of treatment completion/non-completion
- Conviction rate, BAC refusal rate, age and gender of offender statewide and by jurisdiction
- Number of first and repeat offenders statewide and by jurisdiction
- BAC distribution statewide and by jurisdiction, enforcement agency, etc.
- Plea bargain rates statewide and by jurisdiction
- Sentence or adjudication diversions/deferrals, if applicable
- Referrals to treatment by first-time and repeat offenders
- Numbers of license and vehicle sanctions imposed by DMV
- Average time from arrest to first court appearance, conviction, and sentencing, statewide, by jurisdiction, and by court
- Numbers of warrants issued for failure to appear, etc., statewide and by jurisdiction
- Subsequent violations, including driving while suspended/revoked, and resulting penalties during suspension/revocation

Review Procedures, Criteria and Evaluation Factors

Upon receipt of the application package, each package will be reviewed initially to ensure eligibility and that the application contains all of the items specified in the Application Contents Section of this announcement. An Evaluation Committee using the following evaluation criteria will then review applications.

Factor 1.—Status of Existing Impaired Driving Information System and Improvements Planned Through Use of Cooperative Agreement Funding (65 Percent)

The following items will be evaluated under this factor:

(1) The history of improvements to the impaired driving information system and the use of up-to-date technological innovations.

(2) The range of existing DWI laws and systems (*e.g.*, unified versus non unified court system, criminal versus civil offense, rural versus urban, complicated versus simple laws) and proposed improvements to include innovative approaches.

(3) The extent to which proposed innovations leverage/build upon/complement existing efforts and can be transferred to other states.

(4) The extent to which the State has documented and assessed current system(s) and developed short and long-term plans for improvement. This includes but is not limited to: (a) How citations are provided to the court system (*i.e.*, mailed, hand-carried, faxed, electronic transfer, etc.); and (b) the approximate length of time (for 90% of drivers charged with alcohol-related driving offenses) from citation issuance or arrest through adjudication, from adjudication to the State DMV, then posted to the driver's license record and made available to law enforcement and the court system.

(5) How technological innovations will improve system(s).

(6) How the system improvements meet the five functions and ten features of the model system, described in this notice.

(7) The proposal's feasibility, realism, and the ability of the lead agency, with stakeholder cooperation and buy-in, to implement a statewide model impaired driving information system. Additionally, the lead agency will indicate its willingness to work cooperatively with NHTSA.

Factor 2.—Project Management and Project Personnel (20 Percent)

The clarity and soundness of the project management structure, budget and the delineation of partners and stakeholders role in the project will be evaluated. The project personnel will be reviewed in terms of qualifications and experience. The staffing of the project should be adequate to manage and implement the project. In addition, the proposed budget will be evaluated to determine the degree to which it effectively and efficiently utilizes both Federal Government and other funding. Financial contributions from stakeholder sources will be evaluated.

Factor 3.—Past Performance and Financial Responsibility (15 Percent)

The extent to which the proposed Grantee has fulfilled its performance and financial obligations on previous Assistance Agreements and/or Contracts will be evaluated. This evaluation will include:

(1) The proposed Grantee's record of complying with milestone and performance schedules applicable to previous Assistance Agreements and/or Contracts;

(2) The proposed Grantee's record of cooperation with the awarding agency under previous Assistance Agreements and/or Contracts;

(3) The degree to which the proposed Grantee efficiently and effectively utilized Assistance Agreement and/or Contract funding;

(4) The degree to which the proposed Grantee complied with the terms and conditions of previous Assistance Agreements and/or Contracts;

(5) The degree to which the proposed Grantee complied with applicable Office of Management and Budget (OMB) Circulars and/or the Federal Acquisition Regulation, on previous Assistance Agreements and/or Contracts;

(6) The level of financial stability possessed by the proposed Grantee.

Terms and Conditions After Award

1. Prior to award, each Grantee(s) must comply with the certification requirements of 49 CFR Part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR Part 29, Department of Transportation government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants).

2. Reporting Requirement and Deliverables:

a. Quarterly Progress Reports should include a summary of the previous quarter's activities and accomplishments, as well as the proposed activities for the upcoming quarter. Any decisions and actions required in the upcoming quarter should be included in the report. The Grantee(s) shall provide a progress report to the Contracting Office's Technical Representative (COTR) every ninety (90)-days following date of award, except when a final report is due.

b. Project Work Plan, Implementation, and Evaluation Plan, with timelines to include critical path, major and minor milestones, and system checks. The Grantee(s) shall submit project work plan, implementation plan and evaluation plans with timelines incorporating comments received from the NHTSA COTR no more than 2 months after award of this agreement. This involves identification and resolution of potential technical problems and critical issues related to successful completion of this project. Briefly outline a specific work plan to document your project's history, how to implement a similar project, and a plan to evaluate its efficacy and effectiveness to include lessons-learned, best

practices, organizational support, and costs. This outline should identify specific tasks required to accomplish the goals and objectives of the project, detailing how the system will be documented for replication by another agency. The specific innovations, interventions, and activities must be included in the work plan.

c. Draft Final Report. The Grantee(s) shall prepare a Draft Final Report that includes a description of the implemented project or system, partners, system design and innovations, evaluation methodology and findings, and recommendations for system improvements. In terms of ability to transfer the technology or the system to another State, it is important to know what worked and did not work, under what circumstances, and what can be done to avoid potential problems in future projects. The Grantee(s) shall submit the Draft Final Report to the COTR 90 days prior to the end of the performance period. The COTR will review the draft report and provide comments to the Grantee(s) within 30 days of receipt of the document.

d. Final Report. The Grantee(s) shall revise the Draft Final Report to reflect the COTR's comments. The revised final report shall be delivered to the COTR one (1) month before the end of the performance period. The Grantee(s) shall supply the COTR one-camera ready version of the document, as printed and one copy, on appropriate media (diskette, etc.) of the document in the original program format that was used for the printing process. Some documents require several different original program languages (*e.g.*, PageMaker for general layout and design, PowerPoint for charts, Project for project timeline management, and another for photographs, etc.). Each of these component parts should be available on disk, properly labeled with the program format and the file names. For example, PowerPoint files should be clearly identified by both a descriptive name and file name (*e.g.*, 2000 Fatalities—chart1.ppt). The document must be completely assembled with all colors, charts, sidebars, photographs, and graphics. This can be delivered to NHTSA on a standard 1.44 floppy diskette (for small documents) or on any appropriate archival media (for larger documents) such as a CD ROM, TR–1 Mini cartridge, SyQuest disk, etc. The Grantee(s) shall provide four additional hard copies of the final document.

e. Briefings, Presentations and System Demonstrations. The Grantee(s) shall make a briefing and system demonstration to NHTSA officials and other invited parties in Washington, DC at the beginning and upon completion of the project. The Grantee(s) shall make a presentation concerning the project at a minimum of one national meeting (*e.g.*, American Association of Motor Vehicle Administrators (AAMVA) or the Governor's Highway Safety Association (GHSA)). The Grantee(s) shall prepare an article and submit it for publication in a professional journal. An initial briefing, an interim briefing approximately midway through the period of performance, in addition to a final briefing, may be required. All articles, briefings, and presentations/demonstrations will be submitted to NHTSA initially in draft format for review and comment. The Grantee(s) shall submit drafts to the COTR 60 days before the event date or publication submission date. The COTR will review the draft report and provide comments to the Grantee(s) within 15 calendar days of receipt of the documents.

3. During the effective performance period of cooperative agreements awarded as a result of this announcement, the agreement shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements, dated July 1995.

Issued on: June 10, 2004.

Marilena Amoni,

Associate Administrator for Program Development and Delivery.

[FR Doc. 04–13611 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Request for OMB Clearance of an Information Collection; Customer Satisfaction Surveys Program

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment to the Office of Management and Budget (OMB) on continuing need for and usefulness of BTS'' Customer Satisfaction Surveys. This collection request has been published in the **Federal Register** on March 31, 2004 on Page 17031 with a 60 day comment period ending May 30, 2004. The 60 day notice produced no comments. This collection is now being submitted to OMB for approval.

DATES: Written comments should be submitted by July 19, 2004.

ADDRESSES: You may submit a comment (identified by OMB Number 2139–0007) to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: BTS Desk Officer.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Putman, Office of Survey Programs, K–23, Room 4432, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–5336.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2139–0007.

Title: Customer Satisfaction Surveys.

Form No.: None.

Type Of Review: Renewal of a currently approved collection.

Respondents: U.S. Households.

Number of Respondents: 22,000.

Estimated Time per Response: 5–17 minutes.

Total Annual Burden: 8700 hours (estimate).

Needs and Uses: In 1993, Executive Order #12862 was implemented by the President to insure the highest quality service possible to the American people. Federal agencies are required to establish and implement customer service standards to guide the operations of the agency, to judge the performance of the agency, and to make appropriate resource allocations. To fulfill the requirements of this mandate, the Bureau of Transportation Statistics (BTS) immediately implemented plans and requirements for measuring customer satisfaction with BTS and Department of Transportation programs and services. As the statistical agency of the Department of Transportation, BTS is charged with fulfilling a wide variety of user needs. BTS has implemented a wide range of customer satisfaction surveys. The approaches include the Omnibus Survey Programs and the BTS Customer Satisfaction Survey, all of which are covered by this clearance request. Consistent with the requirements of Executive Order #12862, BTS plans to continue data collections at several levels to better assess and evaluate customer satisfaction within products, services, and overall performance of the agency over the next three years.

Description of Survey Topics: The Omnibus Surveys Program is comprised of several different surveys—A monthly Household Survey and periodic targeted surveys. The primary purpose of the Omnibus Household Survey are: (1) To determine the public's level of satisfaction with the nation's

transportation system in light of the Department's strategic objectives, (2) to determine the public's satisfaction with the Department of Transportation products and services; and (3) to be a vehicle for the Operation Administrations within the Department of Transportation to survey the public about Administration-specific topics.

The Omnibus targeted surveys are designed on an ''as needed'' basis to address specific, emerging transportation issues. Although there is no schedule for such surveys, this submission requests clearance for a maximum of 8 targeted surveys per year. In the past, BTS has conducted such targeted surveys as the Mariner's Survey (which collects data about the Merchant Marines to be used in the event of a national emergency), the Highway User Survey (which collects data on highway usage) and the Bicycle/Pedestrian Survey (which collects data on bicycle usage and on walking as transportation). Data collection for targeted surveys may be one time only or recurring.

The BTS Customer Satisfaction Survey was implemented in 1998. The resulting data identified customers who are served by the Bureau of Transportation Statistics; determined the kind of quality of services they want; and measured their level of satisfaction with existing services. The surveys covered by this request do not duplicate information currently being collected by any other agency or component within the Department of Transportation. The information to be collected by these surveys is not currently available in any other format or from any other source or combination of sources.

Burden Statement: The total annual respondent burden estimate is 8,700 hours. The number of respondents and average burden hour per response will vary with each survey.

Issued in Washington, DC, on June 9, 2004.

Michael Cohen,

Assistant Director, Survey Programs, Bureau of Transportation Statistics.

[FR Doc. 04–13714 Filed 6–16–04; 8:45 am]

BILLING CODE 4910–HY–P

Corrections

Federal Register

Vol. 69, No. 116

Thursday, June 17, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0012]

Federal Acquisition Regulation; Submission for OMB Review; Termination Settlement Proposal Forms (Standard Forms 1435 through 1440)

Correction

In notice document 04–12098 beginning on page 30887 in the issue of Tuesday, June 1, 2004, make the following correction:

On page 30888, in the first column, in the **DATES** section, in the second and third lines, ''[enter date 30 days after publication in the Federal Register.]'' should read ''July 1, 2004''.

[FR Doc. C4–12098 Filed 6–16–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
June 17, 2004

Part II

Environmental Protection Agency

40 CFR Part 112

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[OPA–2004–0003; FRL–7773–9]

RIN 2050–AF11

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or we) is today proposing to extend, by twelve months certain upcoming compliance dates for the July 2002 Spill Prevention Control and Countermeasure (SPCC or Plan) amendments. The dates affected by today's proposal would be the date for a facility to amend its Plan and the date for a facility to implement that amended Plan in a manner that complies with the newly amended requirements (or, in the case of facilities becoming operational after August 16, 2002, prepare and implement a Plan that complies with the newly amended requirements). In light of a recent partial settlement of litigation involving the July 2002 amendments, we are proposing this extension to, among other things, provide sufficient time for the regulated community to undertake the actions necessary to update (or prepare) their plans. The proposed extension is also intended to alleviate the need for individual extension requests.

DATES: Written comments must be received by July 7, 2004.

ADDRESSES: Submit your comments, identified by Docket ID No. OPA–2004–0003, by one of the following methods:

I. Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

II. Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

III. Mail: The docket for this rulemaking is located in the EPA Docket Center at 1301 Constitution Ave., NW., EPA West, Suite B–102, Washington, DC 20460. The docket number for the proposed rule is OPA–2004–0003. The docket is contained in the EPA Docket Center and is available for inspection by appointment only, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to view the docket by calling 202–566–0276.

IV. Hand Delivery: Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OPA–2004–0003. EPA's policy that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov or e-mail. The EPA EDOCKET and federal regulations.gov websites are "anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number to make an appointment to view the docket is (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this proposed rule, contact Hugo Paul Fleischman at 703–603–8769 (*fleischman.hugo@epa.gov*); or Mark W. Howard at 703–603–8715 (*howard.markw@epa.gov*), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, Mail Code 5203G.

SUPPLEMENTARY INFORMATION: This proposal concerns a one-year extension of the current deadlines contained in 40 CFR 112.3(a) and (b). The contents of this preamble are as follows:

I. General Information
II. Entities Affected by This Proposed Rule
III. Statutory Authority
IV. Background
V. Today's Action
VI. Statutory and Executive Order Reviews

I. General Information

Introduction. For the reasons explained in section V of this notice, the Environmental Protection Agency (EPA or we) is proposing to extend, for one year, the dates in 40 CFR 112.3(a) and (b) for a facility to amend and implement its Plan that complies with the newly amended requirements (or, in the case of a facility becoming operational after August 16, 2002, prepare and implement a Plan in a manner that complies with the newly amended requirements). During the period of the proposed extension, if it is finalized, it would not be necessary for a facility owner or operator to file an extension request pursuant to § 112.3(f). Furthermore, for facilities that have already applied for an extension pursuant to § 112.3(f), if this extension is finalized, it should render such requests moot.

We will address all public comments in a final rule based on this proposed rule. Any parties interested in commenting should do so at this time.

II. Entities Affected by This Proposed Rule

Industry category	NAICS code
Crop and Animal Production	111–112
Crude Petroleum and Natural Gas Extraction	211111
Coal Mining, Non-Metallic Mineral Mining and Quarrying	2121/2123/213114/213116
Electric Power Generation, Transmission, and Distribution	2211
Heavy Construction	234
Petroleum and Coal Products Manufacturing	324
Other Manufacturing	31–33
Petroleum Bulk Stations and Terminals	42271
Automotive Rental and Leasing	5321
Heating Oil Dealers	454311
Transportation (including Pipelines), Warehousing, and Marinas	482–486/488112–48819/4883/48849/492–493/71393
Elementary and Secondary Schools, Colleges	6111–6113
Hospitals/Nursing and Residential Care Facilities	622–623

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

III. Statutory Authority

33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

IV. Background

On July 17, 2002, at 67 FR 47042, EPA published final amendments to the SPCC rule. The rule was effective August 16, 2002. The rule includes compliance dates in § 112.3(a) and (b); the original compliance dates were amended on April 17, 2003 (68 FR 18890).

V. Today's Action

EPA is proposing to extend by one year the compliance dates in § 112.3(a) and (b). The Agency is seeking comment only on today's proposal to extend these dates by one year. The Agency will not respond to comments that are submitted on any other aspect of the SPCC rule.

After the publication of the July 17, 2002 final rule amending the SPCC regulation (67 FR 47042), several members of the regulated community filed legal challenges to certain aspects of the rule. See, *American Petroleum Institute* v. *Leavitt et al.*, No. 1:102CV02247 PLF & consolidated cases (D.D.C. filed November 14, 2002).[1] Settlement discussions between EPA and the plaintiffs have led to an agreement on all issues except one. In a separate notice, EPA recently published clarifications developed by the Agency during the course of settlement proceedings (and which provided the basis for the settlement agreement) regarding the SPCC regulation.

We believe it is appropriate to provide the members of the regulated community with sufficient time to understand these clarifications and be able to incorporate them, as appropriate, in preparing and updating their SPCC Plans in accordance with the 2002 amendments. Therefore, we believe that the current compliance dates would be insufficient for this purpose, and that it would be inefficient to use scarce Agency resources to address this problem by processing individual extension requests.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—OMB Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this proposed rule is a "significant regulatory action'' because it contains novel policy issues. As such, this action was submitted to the Office of Management and Budget (OMB) for review. Changes made in response to OMB suggestions or recommendations are documented in the docket for today's proposal.

B. Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA)

[1] Lead plaintiffs in the cases were American Petroleum Institute (API), Marathon Oil Co., and the Petroleum Marketers Association of America (PMAA).

regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and production facilities, which constitute a large percentage of the facilities affected by this proposed rule, generally defines small businesses as having less than $500,000 in revenues or 500 employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule would temporarily reduce regulatory burden on facilities by extending for one year the compliance dates in § 112.3(a) and (b). We have therefore concluded that today's proposed rule would relieve regulatory burden for small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

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

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's proposed rule would reduce burden and costs on all facilities.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the effect of the proposed rule would be to reduce burden and costs for regulated facilities, including small governments that are subject to the rule.

E. Executive Order 13132—Federalism

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

This proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under CWA section 311(o), EPA believes that States are free to impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters. EPA encourages States to supplement the Federal SPCC program and recognizes that some States have more stringent requirements. 56 FR 54612 (October 22, 1991). This proposed rule would not preempt State law or regulations. Thus, Executive Order 13132 does not apply to this proposed rule.

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

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date.

Today's proposed rule would not significantly or uniquely affect communities of Indian tribal governments. Therefore, we have not consulted with a representative organization of tribal groups.

G. Executive Order 13045—Protection of Children From Environmental Health & Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant'' as defined under Executive Order 12866; and, (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation.

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This proposed rule is not a "significant energy action'' as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

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

This proposed rule does not involve technical standards. Therefore, NTTA is inapplicable.

List of Subjects in 40 CFR Part 112

Environmental protection, Oil pollution, Penalties, Reporting and recordkeeping requirements.

Dated: June 10, 2004.

Michael O. Leavitt,

Administrator.

For the reasons set out in the preamble, title 40 CFR, chapter I, part 112 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 112—OIL POLLUTION PREVENTION

1. The authority for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

Subpart A—Applicability, Definitions, and General Requirements for All Facilities and All Types of Oils

2. Section 112.3 is amended by revising paragraphs (a) and (b) to read as follows:

§ 112.3 Requirement to prepare and implement a Spill, Prevention, Control, and Countermeasure Plan.

* * * * *

(a) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary, to ensure compliance with this part, on or before August 17, 2005, and must implement the amended Plan as soon as possible, but not later than February 18, 2006. If your onshore or offshore facility becomes operational after August 16, 2002, through February 18, 2006, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare a Plan on or before February 18, 2006, and fully implement it as soon as possible, but not later than February 18, 2006.

(b) If you are the owner or operator of an onshore or offshore facility that becomes operational after February 18, 2006, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

* * * * *

[FR Doc. 04–13684 Filed 6–16–04; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
June 17, 2004

Part III

Department of Housing and Urban Development

24 CFR Part 1000

Extension of Minimum Funding Under the Indian Housing Block Grant Program; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4825–I–02]

RIN 2577–AC43

Extension of Minimum Funding Under the Indian Housing Block Grant Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule provides authority for Indian tribes to receive a minimum grant amount under the need component of the Indian Housing Block Grant (IHBG) formula in Fiscal Year 2004. The minimum funding provision currently in effect in HUD's regulations limited authority for receipt of a minimum grant amount to Fiscal Year 2003. The reinstatement of the authority for minimum grant amounts in Fiscal Year 2004 will avoid hardship to the affected tribes.

DATES: *Effective Date:* July 19, 2004.

Comment Due Date: August 16, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 8 a.m. to 5 p.m. Eastern time) at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Rodger Boyd, Deputy Assistant Secretary for Native American Programs, Room 4126, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0001; telephone (202) 401–7914 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) streamlined the way that housing assistance is provided to Native Americans. NAHASDA eliminated several separate assistance programs and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) Program. In addition to simplifying the process of providing housing assistance, the purpose of NAHASDA is to provide federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance.

The regulations governing the IHBG Program are found in part 1000 of HUD's regulations in title 24 of the Code of Federal Regulations. The part 1000 regulations were established as part of a March 12, 1998, final rule implementing NAHASDA. In accordance with section 106 of NAHASDA, HUD developed the March 12, 1998, final rule with active tribal participation and using the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570).

Under the IHBG Program, HUD makes assistance available to tribes for Indian housing activities. The amount of assistance made available to each Indian tribe is determined using a formula (IHBG Formula) that was developed as part of the NAHASDA negotiated rulemaking process. A regulatory description of the IHBG Formula is located in subpart D of 24 CFR part 1000 (§§ 1000.301–1000.340). The IHBG Formula consists of two components: (1) Need and (2) formula current assisted stock (FCAS). Generally, the amount of funding for a tribe is the sum of the need component and the FCAS component, subject to a minimum funding amount authorized by § 1000.328.

The minimum funding provision at § 1000.328 provides that in the first year of NAHASDA participation, an Indian tribe whose allocation is less than $50,000 under the need component of the formula shall have its need component of the grant adjusted to $50,000. In subsequent fiscal years, an Indian tribe whose allocation is less than $25,000 under the need component of the formula shall have its need component of the grant adjusted to $25,000. As originally adopted by the negotiated rulemaking committee and reflected in the March 12, 1998, final rule, § 1000.328 provided that minimum funding under the need component would not extend beyond Federal Fiscal Year 2002.

Section 1000.328 also specifies that the need for the minimum funding provisions will be reviewed in accordance with § 1000.306. Section 1000.306 provides that the IHBG Formula be reviewed within five years after promulgation to determine whether any changes are needed. The negotiated rulemaking committee intended that the IHBG Formula would be reviewed before expiration of the minimum funding provision.

In accordance with § 1000.306, HUD established a negotiated rulemaking committee for the purposes of reviewing and developing changes to the regulations governing the IHBG Formula. However, the work of the committee continued beyond FY2002 and the expiration of the minimum funding provisions. Accordingly, on June 24, 2003 (68 FR 37660), HUD published an interim rule extending the minimum funding under the need component through FY2003 in order to avoid hardship to the affected Indian tribes. The interim rule provided for a 60-day public comment period. HUD received no comments in response to the interim rule.

The negotiated rulemaking committee is close to completion of its work, and a proposed rule to implement the consensus decisions reached by the committee is under development. However, because a rule implementing these regulatory changes was not published prior to the end of Fiscal Year 2003, HUD has determined that an additional extension is required for the minimum funding provision of § 1000.328. If action is not taken now to extend the minimum funding provision, Indian tribes, especially small Indian tribes, would be affected by the lapse of the minimum funding provision.

II. This Interim Rule

This interim rule authorizes for Fiscal Year 2004 the provision in § 1000.328 with respect to the minimum funding amount under the need component of the IHBG for tribes returning for their second or subsequent year's grant. The provision with respect to the $50,000 an Indian tribe receives in its first year of funding under the IHBG Program is not revised by this interim rule. That provision, unlike the minimum funding amount for returning Indian tribes, has no expiration date. Accordingly, this rule applies only to the minimum grant amount that returning Indian tribes may receive.

HUD believes that continuing into Fiscal Year 2004 the authorization for returning Indian tribes to receive the minimum grant amount would avoid unnecessary hardship to many Indian tribes. In the interim, the affected tribes will not suffer a financial loss because of the expiration of the provision in the current regulation.

III. Justification for Interim Rulemaking

Generally, HUD publishes a rule for public comment before issuing a rule for

effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest.''

HUD finds that good cause exists to publish this interim rule for effect without first soliciting public comment. The rule will allow a minimum amount of funding to continue to Indian tribes without a significant lapse in time during which the tribes would be foreclosed from receiving funds entirely or would receive a significant reduction in funds. The funding meets a critical need of many tribes, which would go unmet during the time that it otherwise would take to publish a rule for effect. HUD, however, solicits public comment on this rule.

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review''). OMB determined that this rule is a "significant regulatory action'' as defined in section 3(f) of the order (although not economically significant, as provided in section 3(f)(1) of the order). Any change made to the rule subsequent to its submission to OMB is identified in the docket file, which is available for public inspection in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This interim rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made for the June 24, 2003, interim rule, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That finding remains applicable to this interim rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule and in so doing has certified that this rule will not have a significant economic impact on a substantial number of small entities. This interim rule does not impose any new or modify existing regulatory requirements. Rather, the rule is exclusively concerned with extending the minimum funding provisions under the need component of the IHBG Formula. To the extent the interim rule has any impact on small entities, it will be to the benefit of small Indian tribes, that are the primary beneficiaries of the minimum funding provisions. Although HUD has determined that this interim rule does not have a significant economic impact on a substantial number of small entities, HUD invites comments regarding any less burdensome alternative to this rule that will meet HUD's objectives as described in this preamble.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Number for the IHBG Program is 14.867.

List of Subjects in 24 CFR Part 1000

Aged, Community development block grants, Grant programs-housing and community development, Grant programs-Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

■ Accordingly, HUD amends 24 CFR part 1000 to read as follows:

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

■ 1. The authority citation for 24 CFR part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

■ 2. Revise § 1000.328 to read as follows:

§ 1000.328 What is the minimum amount an Indian tribe can receive under the need component of the formula?

In the first year of NAHASDA participation, an Indian tribe whose allocation is less than $50,000 under the need component of the formula shall have its need component of the grant adjusted to $50,000. The Indian tribe's IHP shall contain a certification of the need for the $50,000 funding. In subsequent years, but not to extend beyond Federal Fiscal Year 2004, an Indian tribe whose allocation is less than $25,000 under the need component of the formula shall have its need component of the grant adjusted to $25,000. The need for this section will be reviewed in accordance with § 1000.306.

Dated: June 2, 2004.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 04–13721 Filed 6–16–04; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Thursday,
June 17, 2004

Part IV

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Allowance System for Controlling HCFC Production, Import and Export; Direct Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[OAR–2003–0130; FRL–7774–1]

Protection of Stratospheric Ozone: Allowance System for Controlling HCFC Production, Import and Export

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to conform its regulations governing the trade of certain ozone depleting substances with the Montreal Protocol and to correct a drafting error. We are approving these minor adjustments to domestic regulations to ensure that those complying with the U.S. regulations are also complying with the terms of the Montreal Protocol.

DATES: This direct rule is effective on August 16, 2004 without further notice, unless EPA receives adverse comment by July 19, 2004. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by EDocket ID No. OAR–2003–0130 (Legacy Docket A–98–33) by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Agency Web site: http://www.epa.gov/edocket.* EDocket, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- Fax comments to (202) 566–1741.
- *Mail/Hand delivery:* Submit comments to Air and Radiation Docket at EPA West, 1301 Constitution Avenue NW., Room B108, Mail Code 6102T, Washington, DC 20460, Phone: (202) 566–1742.

Instructions: Direct your comments to EDocket ID No. OAR–2003–0130. The historical docket for this rulemaking is A–98–33. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are "anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Cindy Newberg, EPA, Global Programs Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 343–9729.

SUPPLEMENTARY INFORMATION: (1) Under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), as amended, the U.S. and other industrialized countries that are Parties to the Protocol have agreed to limit production and consumption of hydrochlorofluorocarbons (HCFCs) and to phase out consumption in a step-wise fashion over time, culminating in a complete phaseout in 2030. The Parties to the Montreal Protocol met November 10–14, 2003 in Nairobi, Kenya where they discussed and agreed to Decision XV/3. As a Party to the Protocol, the United States was represented at that meeting, participated in the discussions, and agreed with the resulting Decision XV/3. Upon review of the current domestic regulations in relation to Decision XV/3, EPA identified discrepancies between the Decision and EPA's regulations. Therefore, Decision XV/3 led to this action aimed at promulgating minor adjustments to the regulations issued January 21, 2003 (68 FR 2820) to ensure that those complying with the U.S. regulations are also complying with the terms of the Montreal Protocol.

EPA is publishing this amendment without prior proposal because we view this as a noncontroversial action and anticipates no adverse comment. However, in the "Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to revise the trade restrictions provisions if adverse comments are filed. This direct final rule will be effective on August 16, 2004 without further notice unless we receive adverse comment by July 19, 2004. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We would consider and address all public comments in any subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

(2) Abbreviations and Acronyms Used in This Document:

Act—Clean Air Act Amendments of 1990

ANPRM—Advance Notice of Proposed Rulemaking

Article 2 countries—industrialized countries who are not parties operating under paragraph 1 of Article 5 of the Montreal Protocol

Article 5 countries—developing countries who satisfy certain conditions laid out in paragraph 1 of Article 5 of the Montreal Protocol

CAA—Clean Air Act Amendments of 1990

cap—limitation in level of production or consumption

CFC—chlorofluorocarbon

CFR—Code of Federal Regulations

EPA—Environmental Protection Agency

FDA—Food and Drug Administration

FR—**Federal Register**

HCFC—hydrochlorofluorocarbon
NASA—National Aeronautics and Space Administration
NODA—Notice of Data Availability
NPRM—Notice of Proposed Rulemaking
ODP—ozone depletion potential (CFR 40, part 82)
ODS—ozone-depleting substance
Party—States and regional economic integration organizations that have consented to be bound by the Montreal Protocol on Substances that Deplete the Ozone Layer
Protocol—Montreal Protocol on Substances that Deplete the Ozone Layer
SBREFA—Small Business Regulatory Enforcement Fairness Act
SNAP—Significant New Alternatives Policy
UNEP—United Nations Environment Programme
U.S.—United States

(3) Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Table of Contents

I. Regulated Entities
II. Background
III. Today's Action
A. Incorporation of Decision XV/3: Obligations of Parties to the Beijing Amendments under Article 4 of the Montreal Protocol with respect to hydrochlorofluorcarbons
1. Trade with States that have ratified the Copenhagen and Beijing Amendments or have shown their intention to ratify, accede, accept, or approve
2. Article 5 Parties
B. Correction to References to Appendices
IV. Administrative Requirements
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Regulated Entities

The HCFC allowance allocation system will affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Chlorofluorocarbon gas manufacturing	325120	2869	Chlorodifluoromethane manufacturers; Dichlorofluoroethane manufacturers; Chlorodifluoroethane manufacturers.
Chlorofluorocarbon gas importers	325120	2869	Chlorodifluoromethane importers; Dichlorofluoroethane importers; Chlorodifluoroethane importers.
Chlorofluorocarbon gas exporters	325120	2869	Chlorodifluoromethane exporters; Dichlorofluoroethane exporters; Chlorodifluoroethane exporters.
Polystyrene Foam Product Manufacturing	326140	3086	Plastics Foam Products (Polystyrene Foam Products).
Urethane and Other Foam Products (Except Polystyrene) Manufacturing.	326150	3086	Insulation and cushioning, foam plastics (except polystyrene) manufacturing.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

In 1990, as part of a resolution on ozone-depleting substances, the Parties to the Protocol identified HCFCs as transitional substitutes for CFCs and other more destructive ozone-depleting substances (ODSs). In 1992, the Parties negotiated amendments to the Protocol (the "Copenhagen Amendment'') that created a detailed phaseout schedule for HCFCs, with a cap on consumption for Article 2 (industrialized) countries like the U.S. The Protocol defines consumption as production plus imports minus exports. The consumption cap is derived from the formula of 2.8 percent of the Party's CFC consumption in 1989, plus the Party's consumption of HCFCs in 1989. Based on this formula, the consumption cap for the U.S. is 15,240 ODP-weighted metric tonnes, effective January 1, 1996.

In the Copenhagen Amendments, the Parties created a schedule with graduated reductions and the eventual phaseout of the consumption of HCFCs. The schedule calls for a 35 percent reduction of the cap in 2004, followed by a 65 percent reduction in 2010, a 90 percent reduction in 2015, a 99.5 percent reduction in 2020, and a total phaseout in 2030. As a Party to the Copenhagen Amendment (the U.S. deposited its instrument of ratification

on March 2, 1994), the U.S. must comply with this phaseout schedule under the Protocol.

In 1999, the Parties negotiated another amendment to the Protocol (the "Beijing Amendment''), where they agreed to a cap on HCFC production for industrialized countries, effective January 1, 2004. This cap was derived from the average of the Party's consumption cap (2.8 percent of the Party's CFC consumption in 1989, plus the Party's HCFC consumption 1989) and the result of the same formula for production (2.8 percent of the Party's CFC production in 1989, plus the Party's HCFC production in 1989). This formula results in a U.S. production cap of 15,537 ODP-weighted metric tonnes. Since the U.S. subsequently joined the Beijing Amendment (the U.S. deposited its instrument of ratification on October 1, 2003) EPA promulgated regulations that are consistent with that production cap as authorized by section 606 of the CAA.

In addition, Parties to the Beijing Amendment agree that under the Beijing amendment, beginning in January 1, 2004, they will ban HCFC imports from and exports to "any State not party to this Protocol.'' These amendments are reflected in Article 4 of the Protocol in paragraphs 1 quin. and 2 quin. As a Party to the Beijing Amendment, the U.S. therefore, has an obligation from January 1, 2004, to ban trade in HCFCs with respect to "any State not party to this Protocol.'' The Protocol defines this phrase (Article 4(9)) to include any state or regional economic integration organization (of which the European Community is the only present example) that has not agreed to be bound by the control measures in effect for HCFCs.

To implement the Protocol, as amended by the Copenhagen and Beijing Amendments, EPA established an allowance system to control the U.S. consumption of HCFCs and published the implementing regulations in the **Federal Register** on January 21, 2003 (68 FR 2820). The HCFC allowance system is part of EPA's program to reduce the emissions of ODSs to protect the stratospheric ozone layer. These regulations also included a provision, § 82.15(e), to implement the ban on trade with states not a Party to the Protocol. EPA interpreted Article 4 of the Protocol to ban imports from and exports to countries that had not ratified the amendments to the Protocol containing control measure for HCFCs relevant to that country (*e.g.* for countries that produce HCFCs they needed to be a Party to Beijing, but for countries that only consume, but do not produce HCFCs, they needed to be a Party to Copenhagen).

III. Today's Action

A. Incorporation of Decision XV/3: Obligations of Parties to the Beijing Amendments Under Article 4 of the Montreal Protocol With Respect to Hydrochlorofuorcarbons

The Parties to the Montreal Protocol met November 10–14, 2003 in Nairobi, Kenya where they discussed and agreed to Decision XV/3. The Decision was necessary because different Parties to the Beijing Amendment, including the U.S., were adopting differing and conflicting interpretations of the term "State not a party to the Protocol'' domestically in ways that would have created great uncertainty and confusion within the regulated community with respect to which States trade was allowed under Article 4. As a Party to the Protocol, including both the Copenhagen and Beijing amendments, the United States was represented at that meeting, participated in the discussions, and agreed with the resulting Decision XV/3. Upon review of the current domestic regulations in relation to Decision XV/3, EPA identified discrepancies between the Decision and EPA's regulations. Therefore, Decision XV/3 led to this action aimed at promulgating minor adjustments to the regulations issued January 21, 2003 (68 FR 2820) to ensure that those complying with the U.S. regulations are also complying with the terms of the Montreal Protocol. What follows is a review of Decision XV/3 and a discussion of what changes are being made to the current regulations through this action.

Decision XV/3 reads as follows:

Affirming that it is operating by consensus,

Reaffirming the obligation to control consumption of hydrochlorofluorocarbons by the Parties to the amendment adopted by the Fourth Meeting of the Parties to the Montreal Protocol at Copenhagen on 25 November 1992 (the "Copenhagen Amendment''),

Reaffirming the obligation to control production of hydrochlorofluorocarbons by the Parties to the amendment adopted by the Eleventh Meeting of the Parties to the Montreal Protocol at Beijing on 3 December 1999 (the "Beijing Amendment''),

Strongly urging all States not yet party to the Copenhagen or Beijing Amendments to ratify, accede to or accept them as soon as possible,

Recalling that, as of 1 January 2004, the Parties to the Beijing Amendment have accepted obligations under Article 4, paragraph 1 quin., and paragraph 2 quin., of the Protocol to ban the import and export of the controlled substances in group 1 of Annex C (hydrochlorofluorocarbons) from any "State not a party to this Protocol,''

Noting that Article 4, paragraph 9 of the Protocol provides that "for the purposes of this Article, the term "State not party to this Protocol'' shall include, with respect to a particular controlled substance, a State or regional economic integration organization that has not agreed to be bound the control measures in effect for that substance,''

Acknowledging that the meaning of the term "State not party to this Protocol'' may be subject to differing interpretation with respect to hydrochlorofluorocarbons by Parties to the Beijing Amendment, given that control measures for the consumption of hydrochlorofluorocarbons were introduced in the Copenhagen Amendment while control measures for the production of hydrochlorofluorocarbons were introduced in the Beijing Amendment,

Acknowledging also that, for those Parties operating under Article 5, paragraph 1, of the Protocol no control measures for the consumption of production of hydrochlorofluorocarbons will be in effect under either the Copenhagen or Beijing Amendments until 2016,

Desiring to decide in that context on a practice in the application of Article 4, paragraph 9 of the Protocol by establishing by consensus a single interpretation of the term "State not party to this Protocol,'' to be applied by Parties to the Beijing Amendment for the purpose of trade in hydrochlorofluorocarbons under Article 4 of the Protocol,

Expecting Parties to the Beijing Amendment to import or export hydrochlorofluorocarbons in ways that do not result in the importation of exportation of hydrochlorofluorocarbons to any "State not party to this Protocol'' as that term is interpreted herein, recognizing the need to assess the fulfillment of that expectation,

1. That the Parties to the Beijing Amendment will determine their obligations to ban the import and export of controlled substances in group I of Annex C (hydrochlorofluorocarbons) with respect to States and regional economic organizations that are not parties to the Beijing Amendment by January 1, 2004 in accordance with the following:

(a) The term "State not party to this Protocol'' in Article 4, paragraph 9 does

not apply to those States operating under Article 5, paragraph 1, of the Protocol until January 1, 2016 when, in accordance with the Copenhagen and Beijing Amendments, hydrochlorofluorocarbon production and consumption control measures will be in effect for States that operate under Article 5, paragraph 1, of the Protocol;

(b) The term "State not party to this Protocol'' includes all other States and regional economic integration organizations that have not agreed to be bound by the Copenhagen and Beijing Amendments;

(c) Recognizing, however, the practical difficulties imposed by the timing associated with the adoption of the foregoing interpretation of the term "State not party to this Protocol,'' paragraph 1 (b) shall apply unless such a State has by 31 March 2004:

(i) Notified the Secretariat that it intends to ratify, accede or accept the Beijing Amendment as soon as possible;

(ii) Certified that it is in full compliance with Articles 2, 2A to 2G and Article 4 of the Protocol, as amended by the Copenhagen Amendment;

(iii) Submitted data on (i) and (ii) above to the Secretariat, to be updated on 31 March 2005,

in which case that State shall fall outside the definition of "State not party to this Protocol'' until the conclusion of the Seventeenth Meeting of the Parties;

2. That the Secretariat shall transmit data received under paragraph 1 (c) above to the Implementation Committee and the Parties;

3. That the Parties shall consider the implementation and operation of the foregoing decision at the Sixteenth Meeting of the Parties, in particular taking into account any comments on the data submitted by States by 31 March 2004 under paragraph 1 (c) above that the Implementation Committee may make.

This Decision differs from the corresponding U.S. requirements promulgated at 40 CFR part 82, subpart A. The Parties' recent agreement to Decision XV/3 permits trade in HCFCs when the criteria stated in the Decision have been met. The current regulations also provide for trade in HCFCs; however, the criteria in Decision XV/3 are different from the current criteria at 40 CFR part 82, subpart A.

§ 82.15(e) reads:

(e) Trade with Parties. Effective January 1, 2004, no person may import or export any quantity of a class II controlled substance listed in Appendix A to this subpart, from or to any foreign state that is not listed as a Party either:

(1) In Appendix L of this subpart and also listed in Appendix C, Annex 1 of the Protocol as having ratified the Beijing Amendments, or

(2) In Appendix C, Annex 1 of the Protocol as having ratified Copenhagen Amendments but not listed in Appendix L of this subpart, or

(3) In Appendix C, Annex 2 of the Protocol, as being a foreign state complying with the Beijing Amendments if the foreign state is listed in Appendix L of this subpart, or as being a foreign state complying with Copenhagen Amendments if the foreign state is not listed in Appendix L of this subpart.

This action today modifies the current regulations to eliminate the inconsistencies with Decision XV/3. In addition, as set forth below, this action corrects drafting errors discovered after the Final Rule was published in the **Federal Register** in January 21, 2003. As a result, the revised regulations will permit trades consistent with the requirements decided by the Parties and in accordance with the terms of Decision XV/3.

Under section 614(b) of the Clean Air Act, Title VI of the Act "shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, as provided in Article 2, paragraph 11 thereof and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol.'' 42 U.S.C. 7671m(b). Furthermore, with respect to trade restrictions, this provision specifically states that "[n]othing in this subchapter shall be construed, interpreted, or applied to affect the authority or responsibility of the Administrator to implement Article 4 of the Montreal Protocol with other appropriate agencies.'' Finally, section 614(b) of the Act provides that "[i]n case of a conflict between any provision of this subchapter [Title VI] and any provision of the Montreal Protocol, the more stringent provision shall govern.'' Accordingly, EPA may not promulgate regulations under the Clean Air Act that authorize trade of HCFCs with nations not authorized under Article 4 and Decision XV/3 of the Montreal Protocol. In addition, EPA does not wish to impose trade restrictions more stringent than those required under the Protocol.

EPA considers Decisions of the Parties, as well as the text of the Protocol itself, when applying section 614(b). Under customary international law, as codified in the 1969 Vienna Convention on the Law of Treaties (8 International Legal Materials 679 (1969)) both the treaty text and the practice of the parties in interpreting that text form the basis for its interpretation. Although the United States is not a party to the 1969 Convention, it has regarded it since 1971 as "the authoritative guide to current treaty law and practice.'' See Secretary of State William D. Rodgers to President Richard Nixon, October 18, 1971, 92nd Cong., 1st Sess., Exec. L (November 22, 1971). Specifically, Article 31(1) of the Vienna Convention provides that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.'' Article 31(3) goes on to provide that "[t]here shall be taken into account, together with the context: (a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.'' Decision XV/3 constitutes a subsequent consensus agreement among the Parties to the Montreal Protocol, including the United States, regarding the interpretation and application of the trade restriction provision in Article 4 of the Protocol. Decision XV/3 also constitutes subsequent practice in the application of the Montreal Protocol by the Parties to it, including the United States. Thus, EPA intends to conform its regulations on trade restrictions with Decision XV/3.

1. Trade With States That Have Ratified the Copenhagen and Beijing Amendments or Have Shown Their Intention To Ratify, Accede, Accept, or Approve

Section 82.15(e)(2) permits trade with non-producing countries that have ratified the Copenhagen Amendments. However, Decision XV/3 is more restrictive than the current EPA promulgated regulations. According to Decision XV/3 starting on January 1, 2004, notwithstanding the ability to trade with States operating under Article 5(1) of the Protocol, U.S. companies cannot trade HCFCs with any State not operating under Article 5(1) of the Protocol that has not agreed to be bound by (ratified) the Copenhagen and Beijing Amendments, unless that State has fulfilled the requirements under paragraphs 1(c)(i) through (iii) of Decision XV/3 and submitted the information to the Ozone Secretariat by March 31, 2004. In accordance with this Decision, it would be a violation of the Protocol to trade HCFCs with a non-Article 5(1) Party that has not ratified both the Copenhagen and Beijing Amendments, unless the State has provided the relevant information listed in paragraphs (c)(i) through (iii) of Decision XV/3 to the

Ozone Secretariat by March 31, 2004. Therefore, as a Party to the Protocol and a participant in the discussions that resulted in Decision XV/3, EPA believes it is necessary to amend the regulations to be consistent with the Decision.

In addition, under EPA's current interpretation of § 82.15(e)(3) (correcting for the absence of the referenced Appendix C to the Protocol as set forth below), this regulation permitted trade with any party determined by EPA to be in compliance with relevant amendment to the Protocol and listed by EPA in Appendix C of 40 CFR part 82, subpart A. However, before trade with such nations is permitted, Decision XV/3 requires such parties to submit notification, certification, and data to the Ozone Secretariat in accordance with paragraphs (1)(c)(i)–(iii) of the Decision. As a Party to the Protocol and a participant in the discussions that resulted in Decision XV/3, EPA must amend its regulations to reflect these additional requirements of the Decision.

EPA recognizes that the process to ratify amendments to the Protocol can be lengthy and cumbersome. Further, often countries make their intention to ratify amendments and begin to comply with the terms of the amendments in advance of actual ratification. The criteria established by Decision XV/3 (c)(i) through (iii) provide an appropriate mechanism for the Ozone Secretariat and EPA to ensure compliance with the terms of the amendments in advance of ratification of the amendments by those States.

Through this action, EPA is amending § 82.15(e) to permit trade with non-Article 5(1) Parties that have not ratified both the Copenhagen and Beijing Amendments, if the States have provided the relevant information listed in paragraphs (c)(i) through (iii) of Decision XV/3 to the Ozone Secretariat by March 31, 2004.

The Ozone Secretariat has agreed to collect the necessary documentation required by Decision XV/3(c) and will publish the list of countries that met the March 31, 2004 deadline. At this time, the Ozone Secretariat is maintaining a list of countries that have submitted the required data on its Web site: *http://www.unep.org/ozone/index.asp,*

Obligations of Parties to the Beijing Amendment under Article 4 of the Montreal Protocol with Respect to Hydrochlorofluorocarbons (HCFCs). To ensure that the regulated community, the Agency and all interested parties are referencing the most accurate and complete list of Parties complying with Decision XV/3(c), EPA recommends referring to Ozone Secretariat's list. However, to further simplify implementation, through this action, EPA is adding to Appendix C of subpart A of 40 CFR part 82, Annex 3, titled Nations that are Parties to the Montreal Protocol that have not yet ratified all applicable Amendments to the Protocol but have Notified the Ozone Secretariat and Properly Submitted Supporting Documentation in Accordance with the Requirements of Decision XV/3. This list of Parties that will appear in Annex 3 to Appendix C is consistent with the most recent information provided to the EPA by the Ozone Secretariat. It is intended to mirror the Ozone Secretariat's document. The reader is informed that the list maintained by the Ozone Secretariat may be used to supplement the Annex since the Ozone Secretariat's list may include additional States that complied with the Decision and met the deadline. EPA consults with the Ozone Secretariat regularly and therefore believes that only a select number of additional States may be added to the Ozone Secretariat's list, but noting this potential, EPA believes its own Annex may need to be supplemented from time to time. EPA plans to use other non-regulatory outreach means to alert the regulated entities of any States that have been included on the Ozone Secretariat's list but do not appear in Annex 3. Further, the Agency plans to appropriately revise Annex 3 to Appendix C through a subsequent notice.

As a result of these changes to subpart A to incorporate Decision XV/3, EPA is also eliminating Appendix L to Subpart A. The Ozone Secretariat's list and Annex 3 to Appendix C of this subpart provides the reader with sufficient guidance to ensure that Parties have submitted data in accordance with Decision XV/3(c); therefore, Appendix L to Part 82, Subpart A—Parties to the Montreal Protocol that Have Reported Production of HCFCs Since 1996 in Accordance With Article 7, paragraph 3 of the Montreal Protocol is no longer needed. Eliminating Appendix L will limit the potential for misinterpretation. Thus, through today's action, EPA is removing Appendix L from subpart A.

2. Article 5 Parties

Parties to the Montreal Protocol that are operating under Article 5(1) have been given a different schedule for phasing out their production and consumption of ozone-depleting substances, than those that are not listed under Article 5(1). EPA would like to clarify that in accordance with the Protocol, Parties to the Protocol that operate under Article 5(1) may continue to trade in HCFCs with other Parties as long as they continue to meet the appropriate obligations under the Protocol and its amendments, until the date for phasing out HCFC consumption and production by Article 5(1) countries has been reached. Under Article 5(1) of the Protocol no control measures for the consumption or production of HCFCs will be in effect under either the Copenhagen or Beijing Amendments until 2016. Therefore, through this action, EPA is amending § 82.15(e) appropriately.

EPA is also adding to Appendix C of this subpart Annex 4: Nations that are Parties to the Montreal Protocol and are operating under Article 5(1) as of June 17, 2004. Annex 4 is a list of nations that are operating under Article 5(1) of the Montreal Protocol. Including this annex in the subpart will assist regulated entities complying with the regulations by providing a list of nations operating under Article 5(1) in the regulatory text. While this information will be valuable, the Agency notes that the list is dated June 17, 2004. Additional nations may agree to the terms of the Montreal Protocol, become a Party to the treaty, and qualify to operate under these provisions after this list appears in the **Federal Register**, and thus will not be included in Annex 4. Therefore, while including Annex 4 in this subpart is useful and will benefit the regulated entities, Annex 4 to Appendix C of subpart A is not intended to be the sole and complete catalogue of Article (5)(1) nations.

Through this action, EPA is adding Annex 4: Nations that are Parties to the Montreal Protocol and are operating under Article 5(1) as of June 17, 2004 to Appendix C of subpart A.

B. Corrections to the References to Appendices

Appendix C of 40 CFR part 82, subpart A provides information on ratification, accession, acceptance, and approval of the Montreal Protocol, London amendment, Copenhagen Amendment, Montreal Amendment and the Beijing Amendment. Section 82.15(e) was intended to cite this Appendix. However, the language at § 82.15(e) contains drafting errors and refers instead to Appendix C of the Montreal Protocol. There is no Appendix C to the Montreal Protocol. In the absence of an Appendix C to the Protocol, EPA interprets § 82.15(e) to refer to Appendix C of subpart A. While the Agency has made this interpretation known through letters to regulated entities, a change to the regulations is necessary to ensure that all interested parties are able to correctly interpret the regulations. Therefore, through today's action, EPA will amend § 82.15(e) to

ensure that all references are to Appendix C of subpart A of 40 CFR part 82.

With the promulgation of this action, Appendix C of subpart A will have four separate sections (annexes). Currently, the CFR includes the 2 sections: Appendix C to Subpart A:—Parties to the Montreal Protocol (As of June 14, 2002) and Annex 2: Annex 2 to Subpart A—Nations Complying with, But Not Parties to, the Protocol. This action is adding the following sections: Annex 3: Nations that are Parties to the Montreal Protocol that have not yet ratified all applicable Amendments to the Protocol but have Notified the Ozone Secretariat and Properly Submitted Supporting Documentation in Accordance with the Requirements of Decision XV/3 and Annex 4: Nations that are Parties to the Montreal Protocol and are operating under Article 5(1) as of June 17, 2004. To further clarify that Appendix C has four distinct sections, through this action, EPA is amending the titles of each section to include "Appendix C'' in each and to label the sections as "Annex 1,'' "Annex 2,'' and "Annex 3'' respectively. Thus the revised titles will be:

—Appendix C to Subpart A, Annex 1—Parties to the Montreal Protocol, as amended by the Beijing Amendment (As of June 14, 2002)

—Appendix C to Subpart A, Annex 2—Nations Complying with, But Not Parties to, the Protocol

—Appendix C to Subpart A, Annex 3—Nations that are Parties to the Montreal Protocol that have not yet ratified all applicable Amendments to the Protocol but have Notified the Ozone Secretariat and Properly Submitted Supporting Documentation in Accordance with the Requirements of Decision XV/3.

—Appendix C to Subpart A, Annex 4—Nations that are Parties to the Montreal Protocol and are operating under Article 5(1) as of June 17, 2004.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

It has been determined that this rule is not a "significant regulatory action'' within the meaning of the Executive Order.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) previously approved the information collection requirements that can be used to implement today's direct final rule. The previously approved ICR is assigned OMB control number 2060–0170 (EPA ICR No. 1432.21). A copy of the OMB approved Information Collection Request (ICR) may be obtained from The Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMBcontrol numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

There is no additional paperwork burden as a result of this rule. Current record keeping will allow EPA to implement the provisions of today's action.

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

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

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS Code	SIC Code	NAICS small business size standard (in number of employees or millions of dollars)
1. Chemical and Allied Products, NEC	424690	5169	100
2. Chlorofluorocarbon gas exporters	325120	2869	100

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. None of the entities affected by this rule are considered small as defined by the NAICS Code listed above.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal government and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates'' that may result in expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a written statement is required under section 202, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Section 203 of the UMRA requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 of the UMRA requires the Agency to develop a process to allow elected State, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local and tribal governments, in the aggregate, or by the private sector, in any one year. The provisions in today's rule fulfill the obligations of the United States under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer, as well as those requirements set forth by Congress in the Clean Air Act. Viewed as a whole, all of today's amendments do not create a Federal mandate resulting in costs of $100 million or more in any one year for State, local and tribal governments, in the aggregate, or for the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected State, local, and tribal officials under section 204.

E. Executive Order 13132: Federalism

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

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule is expected to primarily affect importers and exporters of HCFCs. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. It does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This is not such a rule, and therefore Executive Order 13045 does not apply. This rule is not subject to Executive Order 13045 because it implements specific trade measures adopted under the Montreal Protocol and required by section 614 of the CAA.

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

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

I. The National Technology Transfer and Advancement Act

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

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective August 16, 2004.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Imports, Reporting and recordkeeping requirements.

Dated: June 10, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons stated in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

■ 2. Revise § 82.15 (e) to read as follows:

§ 82.15 Prohibitions for Class II Controlled Substances.

* * * * *

(e) Trade with Parties. No person may import or export any quantity of a class II controlled substance listed in Appendix A to this subpart, from or to any foreign state that is not either:

(1) A Party to the Montreal Protocol that has ratified the Beijing Amendments. Parties that have ratified the Beijing Amendments as of June 17, 2004 are listed in Annex 1 to Appendix C of this subpart. Or,

(2) A Party to the Montreal Protocol that has provided notice, certification, and data in accordance with Decision XV/3(c)(i), (ii), and (iii) respectively, to the Ozone Secretariat. A list of Parties that have provided notice, certification and data in accordance with Decision XV/3(c)(i), (ii), and (iii) respectively, by June 17, 2004 can be found in Annex 3 to Appendix C of this subpart and on a list maintained by the Ozone Secretariat. Or,

(3) A Party to the Montreal Protocol operating under Article 5(1) to the Montreal Protocol. A list of Parties operating under Article 5(1) to the Montreal Protocol as of June 17, 2004 can be found in Annex 4 to Appendix C of this subpart.

* * * * *

■ 3. Appendix C to subpart A is amended by adding Annexes 3 and 4 as follows:

Appendix C to Subpart A of Part 82—Parties to the Montreal Protocol, and Nations Complying With, but Not Parties to, the Protocol

* * * * *

Annex 3 to Appendix C of Subpart A: Nations that are Parties to the Montreal Protocol that have not yet Ratified all applicable Amendments to the Protocol but have Notified the Ozone Secretariat and Properly Submitted Supporting Documentation in Accordance with the Requirements of Decision XV/3.

Non-article 5 parties	Party to the Copenhagen amendment	Party to the Beijing Amendment	Parties that have submitted data in accordance with Dec. XV/3, para 1 (c)(iii)		
			1(c)(ii)	1(c)(ii), Article 2, 2A–2G	1(c)(ii), Article 4
Australia	Yes	No	Yes	Yes	Yes
Austria	Yes	No			
Azerbaijan	Yes	No			
Belarus	No	No			
Belgium	Yes	No			
Bulgaria	Yes	Yes			
Canada	Yes	Yes			
Czech Republic	Yes	Yes			
Denmark	Yes	Yes			
Estonia	Yes	No			
European Community	Yes	Yes			
Finland	Yes	Yes			
France	Yes	Yes			
Germany	Yes	Yes			
Greece	Yes	No	Yes	Yes	Yes
Hungary	Yes	Yes			
Iceland	Yes	Yes			
Ireland	Yes	No			
Israel	Yes	No			
Italy	Yes	No	Yes	Yes	Yes
Japan	Yes	Yes			
Kazakhstan	No	No	Yes	Yes	Yes
Latvia	Yes	No			

Non-article 5 parties	Party to the Copenhagen amendment	Party to the Beijing Amendment	Parties that have submitted data in accordance with Dec. XV/3, para 1 (c)(iii)		
			1(c)(ii)	1(c)(ii), Article 2, 2A–2G	1(c)(ii), Article 4
Liechtenstein	Yes	Yes			
Lithuania	Yes	No	Yes		
Luxembourg	Yes	Yes			
Monaco	Yes	Yes			
Netherlands	Yes	Yes			
New Zealand	Yes	Yes			
Norway	Yes	Yes			
Poland	Yes	No	Yes	Yes	Yes
Portugal	Yes	No	Yes	Yes	Yes
Russian Federation	No	No			
Slovakia	Yes	Yes			
Slovenia	Yes	Yes			
Spain	Yes	Yes			
Sweden	Yes	Yes			
Switzerland	Yes	Yes			
Tajikistan	No	No			
Turkmenistan	No	No			
Ukraine	Yes	No			
United Kingdom	Yes	Yes			
United States of America	Yes	Yes			
Uzbekistan	Yes	No			

* * * * *

Annex 4 to Appendix C of Subpart A: Nations That Are Parties to the Montreal Protocol and Are Operating Under Article 5(1)

List of Article 5 Parties

List of Parties Classified as Operating Under Article 5 of the Montreal Protocol

1. Albania
2. Algeria
3. Angola
4. Antigua and Barbuda
5. Argentina
6. Armenia
7. Bahamas
8. Bahrain
9. Bangladesh
10. Barbados
11. Belize
12. Benin
13. Bolivia
14. Bosnia and Herzegovina
15. Botswana
16. Brazil
17. Brunei Darussalam
18. Burkina Faso
19. Burundi
20. Cambodia
21. Cameroon
22. Central African Republic
23. Chad
24. Chile
25. China
26. Colombia
27. Comoros
28. Congo
29. Congo, Democratic Republic of
30. Costa Rica
31. Côte d'Ivoire
32. Croatia
33. Cuba
34. Cyprus
35. Djibouti
36. Dominica
37. Dominican Republic
38. Ecuador
39. Egypt
40. El Salvador
41. Ethiopia
42. Federated States of Micronesia
43. Fiji
44. Gabon
45. Gambia
47. Ghana
48. Grenada
49. Guatemala
50. Guinea
51. Guyana
52. Haiti
53. Honduras
54. India
55. Indonesia
56. Iran, Islamic Republic of
57. Jamaica
58. Jordan
59. Kenya
60. Kiribati
61. Korea, Democratic People's Republic of
63. Kuwait
64. Kyrgyzstan
65. Lao People's Democratic Republic
66. Lebanon
67. Lesotho
68. Liberia
69. Libyan Arab Jamahiriya
70. Madagascar
71. Malawi
72. Malaysia
73. Maldives
74. Mali
75. Malta
76. Marshall Islands
77. Mauritania
78. Mauritius
79. Mexico
80. Moldova
81. Mongolia
82. Morocco
83. Mozambique
84. Myanmar
85. Namibia
86. Nauru
87. Nepal
88. Nicaragua
89. Niger
90. Nigeria
91. Oman
92. Pakistan
93. Palau
94. Panama
95. Papua New Guinea
96. Paraguay
97. Peru
98. Philippines
99. Qatar
100. Romania
101. Rwanda
102. Saint Kitts and Nevis
103. Saint Lucia
104. Saint Vincent and the Grenadines
105. Samoa
106. Saudi Arabia
107. Senegal
108. Serbia and Montenegro
109. Seychelles
110. Sierra Leone
111. Singapore
112. Solomon Islands
113. Somalia
114. South Africa
115. Sri Lanka
116. Sudan
117. Suriname

118. Swaziland
119. Syrian Arab Republic
120. Tanzania, United Republic of
121. Thailand
122. The Former Yugoslav Republic of Macedonia
123. Togo
124. Tonga
125. Trinidad and Tobago
126. Tunisia
127. Turkey
128. Tuvalu
129. Uganda
130. United Arab Emirates
131. Uruguay
132. Vanuatu
133. Venezuela
134. Viet Nam
135. Yemen
136. Zambia
137. Zimbabwe

List of Parties Temporarily Classified as Operating Under Article 5 of the Montreal Protocol

1. Cape Verde
2. Cook Islands
3. Guinea Bissau
4. Niue
5. Sao Tome and Principe

* * * * *

■ 4. Appendix L to Subpart A is removed.

[FR Doc. 04–13680 Filed 6–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[OAR–2003–0130; FRL–7774–2]

Protection of Stratospheric Ozone: Allowance System for Controlling HCFC Production, Import and Export

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing this action to conform its regulations governing the trade of certain ozone depleting substances with the Montreal Protocol and to correct a drafting error. We are proposing minor adjustments to domestic regulations to ensure that those complying with the U.S. regulations are also complying with the terms of the Montreal Protocol. Elsewhere in today's **Federal Register** EPA has also issued today a Direct Final Rule.

DATES: Comments must be received on or before July 19, 2004. If requested by July 2, 2004 a hearing will be held on July 19, 2004 and the comment period will be extended until August 2, 2004.

ADDRESSES: Submit your comments, identified by EDocket ID No. OAR–2003–0130 (Legacy docket A–98–33) by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Agency Web site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- Fax comments to (202) 566–1741.
- *Mail/Hand delivery:* Submit comments to Air and Radiation Docket at EPA West, 1301 Constitution Avenue NW., Room B108, Mail Code 6102T, Washington, DC 20460, Phone: (202) 566–1742.

Instructions: Direct your comments to Docket ID No. OAR–2003–0130. The historical docket for this rulemaking is A–98–33. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are "anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Cindy Newberg, EPA, Global Programs Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 343–9729.

SUPPLEMENTARY INFORMATION: (1) Under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), as amended, the U.S. and other industrialized countries that are Parties to the Protocol have agreed to limit production and consumption of hydrochlorofluorocarbons (HCFCs) and to phase out consumption in a step-wise fashion over time, culminating in a complete phaseout in 2030. The Parties to the Montreal Protocol met November 10–14, 2003 in Nairobi, Kenya where they discussed and agreed to Decision XV/3. As a Party to the Protocol, the United States was represented at that meeting, participated in the discussions, and agreed with the resulting Decision XV/3. Upon review of the current domestic regulations in relation to Decision XV/3, EPA identified discrepancies between the Decision and EPA's regulations. Therefore, Decision XV/3 led to this action aimed at promulgating minor adjustments to the regulations issued January 21, 2003 (68 FR 2820) to ensure that those complying with the U.S. regulations are also complying with the terms of the Montreal Protocol.

EPA views this as a noncontroversial action and anticipates no adverse comment. Therefore, in today's **Federal Register**, we are publishing a separate Direct Final rulemaking to revise the trade restrictions provisions. This direct final rule will be effective on August 16, 2004 without further notice unless we receive adverse comment by July 19, 2004. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. If necessary, we will consider and address all public comments in any subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

(2) Abbreviations and Acronyms Used in This Document:

Act—Clean Air Act Amendments of 1990
ANPRM—Advance Notice of Proposed Rulemaking
Article 2 countries—industrialized countries who are not parties operating under paragraph 1 of Article 5 of the Montreal Protocol
Article 5 countries—developing countries who satisfy certain conditions laid out in paragraph 1 of Article 5 of the Montreal Protocol
CAA—Clean Air Act Amendments of 1990
cap—limitation in level of production or consumption
CFC—chlorofluorocarbon
CFR—Code of Federal Regulations
EPA—Environmental Protection Agency
FDA—Food and Drug Administration
FR—**Federal Register**
HCFC—hydrochlorofluorocarbon
NASA—National Aeronautics and Space Administration

NODA—Notice of Data Availability
NPRM—Notice of Proposed Rulemaking
ODP—ozone depletion potential (CFR 40, part 82)
ODS—ozone-depleting substance
Party—States and regional economic integration organizations that have consented to be bound by the Montreal Protocol on Substances that Deplete the Ozone Layer
Protocol—Montreal Protocol on Substances that Deplete the Ozone Layer
SBREFA—Small Business Regulatory Enforcement Fairness Act
SNAP—Significant New Alternatives Policy
UNEP—United Nations Environment Programme
U.S.—United States

(3) Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Table of Contents

I. Regulated Entities
II. Background
III. Proposed Action
A. Incorporation of Decision XV/3: Obligations of Parties to the Beijing Amendments under Article 4 of the Montreal Protocol with respect to hydrochlorofluorcarbons
1. Trade with States that have ratified the Copenhagen and Beijing Amendments or have shown their intention to ratify, accede, accept, or approve
2. Article 5 Parties
B. Correction to References to Appendices
V. Administrative Requirements
A. Executive Order 12866
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act

I. Regulated Entities

The HCFC allowance allocation system will affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Chlorofluorocarbon gas manufacturing	325120	2869	Chlorodifluoromethane manufacturers; Dichlorofluoroethane manufacturers; Chlorodifluoroethane manufacturers.
Chlorofluorocarbon gas importers	325120	2869	Chlorodifluoromethane importers; Dichlorofluoroethane importers; Chlorodifluoroethane importers.
Chlorofluorocarbon gas exporters	325120	2869	Chlorodifluoromethane exporters; Dichlorofluoroethane exporters; Chlorodifluoroethane exporters.
Polystyrene Foam Products Manufacturing	326140	3086	Plastics Foam Products (Polystyrene Foam Products).
Urethane and Other Foam Products (Except Polystyrene) Manufacturing.	326150	3086	Insulation and cushioning, foam plastics (except polystyrene) manufacturing.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

In 1990, as part of a resolution on ozone-depleting substances, the Parties to the Protocol identified HCFCs as transitional substitutes for CFCs and other more destructive ozone-depleting substances (ODSs). In 1992, the Parties negotiated amendments to the Protocol (the "Copenhagen Amendment") that created a detailed phaseout schedule for HCFCs, with a cap on consumption for Article 2 (industrialized) countries like the U.S. The Protocol defines consumption as production plus imports minus exports. The consumption cap is derived from the formula of 2.8 percent of the Party's CFC consumption in 1989, plus the Party's consumption of HCFCs in 1989. Based on this formula, the consumption cap for the U.S. is 15,240 ODP-weighted metric tonnes, effective January 1, 1996.

In the Copenhagen Amendments, the Parties created a schedule with graduated reductions and the eventual phaseout of the consumption of HCFCs. The schedule calls for a 35 percent reduction of the cap in 2004, followed by a 65 percent reduction in 2010, a 90 percent reduction in 2015, a 99.5 percent reduction in 2020, and a total phaseout in 2030. As a party to the Copenhagen Amendment (the U.S. deposited its instrument of ratification on March 2, 1994), the U.S. must comply with this phaseout schedule under the Protocol.

In 1999, the Parties negotiated another amendment to the Protocol (the Beijing Amendment''), where they agreed to a cap on HCFC production for industrialized countries, effective January 1, 2004. This cap was derived from the average of the Party's consumption cap (2.8 percent of the Party's CFC consumption in 1989, plus the Party's HCFC consumption 1989) and the result of the same formula for production (2.8 percent of the Party's CFC production in 1989, plus the Party's HCFC production in 1989). This formula results in a U.S. production cap of 15,537 ODP-weighted metric tonnes. Since the U.S. subsequently joined the Beijing Amendment (the U.S. deposited its instrument of ratification on October 1, 2003) EPA has promulgated regulations that are consistent with that production cap as authorized by section 606 of the CAA.

In addition, Parties to the Beijing Amendment agree that under the Beijing Amendment, beginning in January 1, 2004, they will ban HCFC imports from and exports to "any State not party to this Protocol.'' These amendments are reflected in Article 4 of the Protocol in paragraphs 1 quin. and 2 quin.

As a party to the Beijing Amendment, the U.S. therefore, has an obligation from January 1, 2004 to ban trade in HCFCs with respect to "any State not party to this Protocol.'' The Protocol defines this phrase (Article 4(9)) to include any State or regional economic integration organization (of which the European Community is the only present example) that has not agreed to be bound by the control measures in effect for HCFCs.

To implement the Protocol, as amended by the Copenhagen and Beijing Amendments, EPA established an allowance system to control the U.S. consumption of HCFCs and published the implementing regulations in the **Federal Register** on January 21, 2003 (68 FR 2820). The HCFC allowance system is part of EPA's program to reduce the emissions of ODSs to protect the stratospheric ozone layer. These regulations also included a provision, section 82.15(e), to implement the ban on trade with states not a Party to the Protocol. EPA interpreted Article 4 of the Protocol to ban imports from and exports to countries that had not ratified the amendments to the Protocol containing control measure for HCFCs relevant to that country (*e.g.*, for countries that produce HCFCs they needed to be a Party to Beijing, but for countries that only consume, but do not produce HCFCs, they needed to be Party to Copenhagen).

III. Proposed Action

A. Incorporation of Decision XV/3: Obligations of Parties to the Beijing Amendments Under Article 4 of the Montreal Protocol With Respect to Hydrochlorofuorcarbons

The Parties to the Montreal Protocol met November 10–14, 2003 in Nairobi, Kenya where they discussed and agreed to Decision XV/3. The Decision was necessary because different Parties to the Beijing Amendment, including the U.S., were adopting differing and conflicting interpretations of the term "state not Party to this Protocol: Domestically and in ways that would have created great uncertainty and confusion within the regulated community with respect to which states trade was allowed under Article 4. As a Party to the Protocol, including both the Copenhagen and Beijing amendments, the United States was represented at that meeting, participated in the discussions, and agreed with the resulting Decision XV/3. Upon review of the current domestic regulations in relation to Decision XV/3, EPA identified discrepancies between the Decision and EPA's regulations. Therefore, Decision XV/3 led to this action aimed at promulgating minor adjustments to the regulations issued January 21, 2003 (68 FR 2820) to ensure that those complying with the U.S. regulations are also complying with the terms of the Montreal Protocol. What follows is a review of Decision XV/3 and a discussion of what changes are being made to the current regulations through this action.

Decision XV/3 reads as follows:

Affirming that it is operating by consensus,

Reaffirming the obligation to control consumption of hydrochlorofluorocarbons by the Parties to the amendment adopted by the Fourth Meeting of the Parties to the Montreal Protocol at Copenhagen on 25 November 1992 (the "Copenhagen Amendment''),

Reaffirming the obligation to control production of hydrochlorofluorocarbons by the Parties to the amendment adopted by the Eleventh Meeting of the Parties to the Montreal Protocol at Beijing on 3 December 1999 (the "Beijing Amendment''),

Strongly urging all States not yet party to the Copenhagen or Beijing Amendments to ratify, accede to or accept them as soon as possible,

Recalling that, as of 1 January 2004, the Parties to the Beijing Amendment have accepted obligations under Article 4, paragraph 1 quin., and paragraph 2 quin., of the Protocol to ban the import and export of the controlled substances in group 1 of Annex C (hydrochlorofluorocarbons) from any "State not a party to this Protocol,''

Noting that Article 4, paragraph 9 of the Protocol provides that "for the purposes of this Article, the term "State not party to this Protocol'' shall include, with respect to a particular controlled substance, a State or regional economic integration organization that has not agreed to be bound the control measures in effect for that substance,''

Acknowledging that the meaning of the term "State not party to this Protocol'' may be subject to differing interpretation with respect to hydrochlorofluorocarbons by Parties to the Beijing Amendment, given that control measures for the consumption of hydrochlorofluorocarbons were introduced in the Copenhagen Amendment while control measures for the production of hydrochlorofluorocarbons were introduced in the Beijing Amendment,

Acknowledging also that, for those Parties operating under Article 5, paragraph 1, of the Protocol no control measures for the consumption of production of hydrochlorofluorocarbons will be in effect under either the Copenhagen or Beijing Amendments until 2016,

Desiring to decide in that context on a practice in the application of Article 4, paragraph 9 of the Protocol by establishing by consensus a single interpretation of the term "State not party to this Protocol,'' to be applied by Parties to the Beijing Amendment for the purpose of trade in hydrochlorofluorocarbons under Article 4 of the Protocol,

Expecting Parties to the Beijing Amendment to import or export hydrochlorofluorocarbons in ways that do not result in the importation of exportation of hydrochlorofluorocarbons to any "State not party to this Protocol'' as that term is interpreted herein, recognizing the need to assess the fulfillment of that expectation,

1. That the Parties to the Beijing Amendment will determine their obligations to ban the import and export of controlled substances in group I of Annex C (hydrochlorofluorocarbons) with respect to States and regional economic organizations that are not parties to the Beijing Amendment by January 1, 2004 in accordance with the following:

(a) The term "State not party to this Protocol'' in Article 4, paragraph 9 does not apply to those States operating under Article 5, paragraph 1, of the Protocol until January 1, 2016 when, in

accordance with the Copenhagen and Beijing Amendments, hydrochlorofluorocarbon production and consumption control measures will be in effect for States that operate under Article 5, paragraph 1, of the Protocol;

(b) The term "State not party to this Protocol'' includes all other States and regional economic integration organizations that have not agreed to be bound by the Copenhagen and Beijing Amendments;

(c) Recognizing, however, the practical difficulties imposed by the timing associated with the adoption of the foregoing interpretation of the term "State not party to this Protocol,'' paragraph 1 (b) shall apply unless such a State has by 31 March 2004:

(i) Notified the Secretariat that it intends to ratify, accede or accept the Beijing Amendment as soon as possible;

(ii) Certified that it is in full compliance with Articles 2, 2A to 2G and Article 4 of the Protocol, as amended by the Copenhagen Amendment;

(iii) Submitted data on (i) and (ii) above to the Secretariat, to be updated on 31 March 2005,

in which case that State shall fall outside the definition of "State not party to this Protocol'' until the conclusion of the Seventeenth Meeting of the Parties;

2. That the Secretariat shall transmit data received under paragraph 1(c) above to the Implementation Committee and the Parties;

3. That the Parties shall consider the implementation and operation of the foregoing decision at the Sixteenth Meeting of the Parties, in particular taking into account any comments on the data submitted by States by 31 March 2004 under paragraph 1(c) above that the Implementation Committee may make.

This Decision differs from the corresponding U.S. requirements promulgated at 40 CFR part 82, subpart A. The Parties' recent agreement to Decision XV/3 permits trade in HCFCs when the criteria stated in the Decision have been met. The current regulations also provide for trade in HCFCs; however, the criteria in Decision XV/3 are different from the current criteria at 40 CFR part 82, subpart A.

§ 82.15(e) reads:

(e) Trade with Parties. Effective January 1, 2004, no person may import or export any quantity of a class II controlled substance listed in Appendix A to this subpart, from or to any foreign state that is not listed as a Party either:

(1) In Appendix L of this subpart and also listed in Appendix C, Annex 1 of the Protocol as having ratified the Beijing Amendments, or

(2) In Appendix C, Annex 1 of the Protocol as having ratified Copenhagen Amendments but not listed in Appendix L of this subpart, or

(3) In Appendix C, Annex 2 of the Protocol, as being a foreign state complying with the Beijing Amendments if the foreign state is listed in Appendix L of this subpart, or as being a foreign state complying with Copenhagen Amendments if the foreign state is not listed in Appendix L of this subpart.

This NPRM proposes to modify the current regulations to eliminate the inconsistencies with Decision XV/3. In addition, as set forth below, this action proposes corrections to drafting errors discovered after the Final Rule was published in the **Federal Register** in January 21, 2003. As a result, the revised regulations will permit trades consistent with the requirements decided by the Parties and in accordance with the terms of Decision XV/3.

Under section 614(b) of the Clean Air Act, Title VI of the Act "shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, as provided in Article 2, paragraph 11 thereof and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol.'' 42 U.S.C. 7671m(b). Furthermore, with respect to trade restrictions, this provision specifically states that "[n]othing in this subchapter shall be construed, interpreted, or applied to affect the authority or responsibility of the Administrator to implement Article 4 of the Montreal Protocol with other appropriate agencies.'' Finally, section 614(b) of the Act provides that "[i]n case of a conflict between any provision of this subchapter [Title VI] and any provision of the Montreal Protocol, the more stringent provision shall govern.'' Accordingly, EPA may not promulgate regulations under the Clean Air Act that authorize trade of HCFCs with nations not authorized under Article 4 and Decision XV/3 of the Montreal Protocol. In addition, EPA does not wish to impose trade restrictions more stringent than those required under the Protocol.

EPA considers Decisions of the Parties, as well as the text of the Protocol itself, when applying section 614(b). Under customary international law, as codified in the 1969 Vienna Convention on the Law of Treaties (8 International Legal Materials 679 (1969)) both the treaty text and the practice of the parties in interpreting that text form the basis for its interpretation. Although the United States is not a party to the 1969 Convention, it has regarded it since 1971 as "the authoritative guide to current treaty law and practice.'' See Secretary of State William D. Rodgers to President Richard Nixon, October 18, 1971, 92nd Cong., 1st Sess., Exec. L (November 22, 1971). Specifically, Article 31(1) of the Vienna Convention provides that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.'' Article 31(3) goes on to provide that "[t]here shall be taken into account, together with the context: (a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.'' Decision XV/3 constitutes a subsequent consensus agreement among the Parties to the Montreal Protocol, including the United States, regarding the interpretation and application of the trade restriction provision in Article 4 of the Protocol. Decision XV/3 also constitutes subsequent practice in the application of the Montreal Protocol by the Parties to it, including the United States. Thus, EPA intends to conform its regulations on trade restrictions with Decision XV/3.

1. Trade With States That Have Ratified the Copenhagen and Beijing Amendments or Have Shown Their Intention To Ratify, Accede, Accept, or Approve

Section 82.15(e)(2) permits trade with non-producing countries that have ratified the Copenhagen Amendments. However, Decision XV/3 is more restrictive than the current EPA promulgated regulations. According to Decision XV/3 starting on January 1, 2004, notwithstanding the ability to trade with States operating under Article 5(1) of the Protocol, U.S. companies cannot trade HCFCs with any State not operating under Article 5(1) of the Protocol that has not agreed to be bound by (ratified) the Copenhagen and Beijing Amendments, unless that State has fulfilled the requirements under paragraphs 1(c)(i) through (iii) of Decision XV/3 and submitted the information to the Ozone Secretariat by March 31, 2004. In accordance with this Decision, it would be a violation of the Protocol to trade HCFCs with a non-Article 5(1) Party that has not ratified both the Copenhagen and Beijing Amendments, unless the State has provided the relevant

information listed in paragraphs (c)(i) through (iii) of Decision XV/3 to the Ozone Secretariat by March 31, 2004. Therefore, as a Party to the Protocol and a participant in the discussions that resulted in Decision XV/3, EPA believes it is necessary to amend the regulations to be consistent with the Decision.

In addition, under EPA's current interpretation of § 82.15(e)(3) (correcting for the absence of the referenced Appendix C to the Protocol as set forth below), this regulation permitted trade with any party determined by EPA to be in compliance with relevant amendment to the Protocol and listed by EPA in Appendix C of 40 CFR part 82, subpart A. However, before trade with such nations is permitted, Decision XV/3 requires such parties to submit notification, certification, and data to the Ozone Secretariat in accordance with paragraphs (1)(c)(i)–(iii) of the Decision. As a Party to the Protocol and a participant in the discussions that resulted in Decision XV/3, EPA must amend its regulations to reflect these additional requirements of the Decision.

EPA recognizes that the process to ratify amendments to the Protocol can be lengthy and cumbersome. Further, often countries make their intention to ratify amendments and begin to comply with the terms of the amendments in advance of actual ratification. The criteria established by Decision XV/3 (c)(i) through(iii) provide an appropriate mechanism for the Ozone Secretariat and EPA to ensure compliance with the terms of the amendments in advance of ratification of the amendments by those States.

Through this action, EPA is proposing to amend § 82.15(e) to permit trade with non-Article 5(1) Parties that have not ratified both the Copenhagen and Beijing Amendments, if the States have provided the relevant information listed in paragraphs (c)(i) through (iii) of Decision XV/3 to the Ozone Secretariat by March 31, 2004.

The Ozone Secretariat has agreed to collect the necessary documentation required by Decision XV/3(c) and will publish the list of countries that met the March 31, 2004 deadline. At this time, the Ozone Secretariat is maintaining a list of countries that have submitted the required data on its Web site: *http://www.unep.org/ozone/index.asp,* Obligations of Parties to the Beijing Amendment under Article 4 of the Montreal Protocol with Respect to Hydrochlorofluorocarbons (HCFCs). To ensure that the regulated community, the Agency and all interested parties are referencing the most accurate and complete list of Parties complying with Decision XV/3(c), EPA recommends referring to Ozone Secretariat's list. However, to further simplify implementation, through this action, EPA is adding to Appendix C of subpart A of 40 CFR part 82, Annex 3, titled Nations that are Parties to the Montreal Protocol that have not yet ratified all applicable Amendments to the Protocol but have Notified the Ozone Secretariat and Properly Submitted Supporting Documentation in Accordance with the Requirements of Decision XV/3. This list of Parties that will appear in Annex 3 to Appendix C is consistent with the most recent information provided to the EPA by the Ozone Secretariat. It is intended to mirror the Ozone Secretariat's document. The reader is informed that the list maintained by the Ozone Secretariat may be used to supplement the Annex since the Ozone Secretariat's list may include additional States that complied with the Decision and met the deadline. EPA consults with the Ozone Secretariat regularly and therefore believes that only a select number of additional States may be added to the Ozone Secretariat's list, but noting this potential, EPA believes its own Annex may need to be supplemented from time to time. EPA plans to use other non-regulatory outreach means to alert the regulated entities of any States that have been included on the Ozone Secretariat's list but do not appear in Annex 3. Further, the Agency plans to appropriately revise Annex 3 to Appendix C through a subsequent notice.

As a result of these changes to subpart A to incorporate Decision XV/3, EPA is also proposing to eliminate Appendix L to Subpart A. The Ozone Secretariat's list and Annex 3 to Appendix C of this subpart provides the reader with sufficient guidance to ensure that Parties have submitted data in accordance with Decision XV/3(c); therefore, Appendix L to part 82, subpart A—Parties to the Montreal Protocol that Have Reported Production of HCFCs Since 1996 in Accordance with Article 7, paragraph 3 of the Montreal Protocol is no longer needed. Eliminating Appendix L will limit the potential for misinterpretation. Thus, through this action, EPA is proposing to remove Appendix L from subpart A.

EPA requests comment on amending § 82.15(e), Appendix C to this subpart and eliminating Appendix L to conform with the Decision XV/3 of the Parties to the Montreal Protocol.

2. Article 5 Parties

Parties to the Montreal Protocol that are operating under Article 5(1) have been given a different schedule for phasing out their production and consumption of ozone-depleting substances, than those that are not listed under Article 5(1). EPA would like to clarify that in accordance with the Protocol, Parties to the Protocol that operate under Article 5(1) may continue to trade in HCFCs with other Parties as long as they continue to meet the appropriate obligations under the Protocol and its amendments, until the date for phasing out HCFC consumption and production by Article 5(1) countries has been reached. Under Article 5 (1) of the Protocol no control measures for the consumption or production of HCFCs will be in effect under either the Copenhagen or Beijing Amendments until 2016. Therefore, through this action, EPA is proposing to amend § 82.15(e) appropriately.

EPA is also proposing to add to Appendix C of this subpart Annex 4: Nations that are Parties to the Montreal Protocol and are operating under Article 5(1) as of June 17, 2004. The proposed Annex 4 is a list of nations that are operating under Article 5(1) of the Montreal Protocol. Including this annex in the subpart will assist regulated entities complying with the regulations by providing a list of nations operating under Article 5(1) in the regulatory text. While this information will be valuable, the Agency notes that the list is dated June 17, 2004. Additional Nations may agree to the terms of the Montreal Protocol, become a Party to the treaty, and qualify to operate under these provisions after this list appears in the **Federal Register**, and thus will not be included in Annex 4. Therefore, while including this Annex in this subpart is useful and will benefit the regulated entities, this annex is not intended to be the sole and complete catalogue of Article (5)(1) nations.

Through this action, EPA is proposing to add Annex 4: Nations that are Parties to the Montreal Protocol and are operating under Article 5(1) as of June 17, 2004 to Appendix C of subpart A.

EPA requests comment on amending the § 82.15(e) to clarify that trade with Article (5)(1) countries may continue in accordance with the terms of this Subpart and the Montreal Protocol. Further, EPA requests comment on adding Annex 4 to Appendix C of this subpart to assist regulated entities complying with these trade restrictions.

B. Corrections to the References to Appendices

Appendix C of 40 CFR part 82, subpart A provides information on ratification, accession, acceptance, and approval of the Montreal Protocol, London amendment, Copenhagen Amendment, Montreal Amendment and

the Beijing Amendment. Section 82.15(e) was intended to cite this Appendix. However, the language at § 82.15(e) contains drafting errors and refers instead to Appendix C of the Montreal Protocol. There is no Appendix C to the Montreal Protocol. In the absence of an Appendix C to the Protocol, EPA interprets § 82.15(e) to refer to Appendix C of subpart A. While the Agency has made this interpretation known through letters to regulated entities, a change to the regulations is necessary to ensure that all interested parties are able to correctly interpret the regulations. Therefore, through this action, EPA proposes to amend § 82.15(e) to ensure that all references are to Appendix C of subpart A of 40 CFR part 82.

With the promulgation of this action, Appendix C of subpart A will have four separate sections (annexes). Currently, the CFR includes the 2 sections: Appendix C to Subpart A:—Parties to the Montreal Protocol (As of June 14, 2002) and Annex 2: Annex 2 to Subpart A—Nations Complying with, But Not Parties to, the Protocol. This action proposes adding the following sections: Annex 3: Nations that are Parties to the Montreal Protocol that have not yet ratified all applicable Amendments to the Protocol but have Notified the Ozone Secretariat and Properly Submitted Supporting Documentation in Accordance with the Requirements of Decision XV/3 and Annex 4: Nations that are Parties to the Montreal Protocol and are operating under Article 5(1) as of June 17, 2004. To further clarify that Appendix C has four distinct sections, through this action, EPA is proposing to amend the titles of each section to include "Appendix C'' in each and to label the sections as "Annex 1,'' "Annex 2,'' "Annex 3,'' and " Annex 4'' respectively. Thus the proposed revised titles will be:

—Appendix C to Subpart A, Annex 1—Parties to the Montreal Protocol, As Amended by the Beijing Amendment (As of June 14, 2002)

—Appendix C to Subpart A, Annex 2—Nations Complying with, But Not Parties to, the Protocol

—Appendix C to Subpart A, Annex 3—Nations that are Parties to the Montreal Protocol that have not yet ratified all applicable Amendments to the Protocol but have Notified the Ozone Secretariat and Properly Submitted Supporting Documentation in Accordance with the Requirements of Decision XV/3.

— Appendix C to Subpart A, Annex 4—Nations that are Parties to the Montreal Protocol and are operating under Article 5(1) as of June 17, 2004.

EPA requests comment on these changes to Appendix C of 40 CFR part 82, subpart A.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

EPA does not believe that this rule is a "significant regulatory action'' within the meaning of the Executive Order. EPA requests comment on this determination.

B. Paperwork Reduction Act

This action does not propose any new information collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0170 (EPA ICR No. 1432.21). A copy of the OMB approved Information Collection Request (ICR) may be obtained from The Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

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

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

For the purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS code	SIC code	NAICS small business size standard (in number of employees or millions of dollars)
1. Chemical and Allied Products, NEC	424690	5169	100
2. Chlorofluorocarbon gas exporters	325120	2869	100

After considering the economic impacts of this proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. None of the entities affected by this rule are considered small as defined by the NAICS Code listed above. EPA requests comments on this determination.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal government and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates'' that may result in expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a written statement is required under section 202, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Section 203 of the UMRA requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 of the UMRA requires the Agency to develop a process to allow elected State, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local and tribal governments, in the aggregate, or by the private sector, in any one year. The provisions in this proposed rule fulfill the obligations of the United States under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer, as well as those requirements set forth by Congress in the Clean Air Act. Viewed as a whole, all of today's proposed amendments do not create a Federal mandate resulting in costs of $100 million or more in any one year for State, local and tribal governments, in the aggregate, or for the private sector. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this proposal contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this proposal does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected State, local, and tribal officials under section 204. EPA requests comments regarding these determinations.

E. Executive Order 13132: Federalism

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

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's proposal is expected to primarily affect importers and exporters of HCFCs. Thus, the requirements of section 6 of the Executive Order do not apply. EPA requests comment regarding this determination.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's proposal does not significantly or uniquely affect the communities of Indian tribal governments. It does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA requests comment on this determination.

G. Applicability of Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant'' as defined under Executive Order 12866, and (2) concerns an

environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This is not such a rule, and therefore E.O. 13045 does not apply. This proposed rule is not subject to E.O. 13045 because it implements specific trade measures adopted under the Montreal Protocol and required by section 614 of the CAA. EPA requests comment on this determination.

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

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

I. The National Technology Transfer and Advancement Act

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

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Imports, Reporting and recordkeeping requirements.

Dated: June 10, 2004.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–13681 Filed 6–16–04; 8:45 am]

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Vol. 69, No. 116

Thursday, June 17, 2004

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FEDERAL REGISTER PAGES AND DATE, JUNE

30815–30996 1
30997–31286 2
31287–31510 3
31511–31720 4
31721–31866 7
31867–32246 8
32247–32434 9
32435–32834 10
32835–33270 14
33271–33534 15
33535–33832 16
33833–34042 17

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7792 32239
7793 32241
7794 32243
7795 32427
7796 33831

Executive Orders:
11582 (See EO 13343) 32245
13342 31509
13343 32245

Administrative Orders:
Memorandums:
Memorandum of June 3, 2004 .....32235, 32833
Presidential Determinations:
No. 2004–31 of May 25, 2004 31511
No. 2004–32 of June 3, 2004 32429
No. 2004–33 of June 3, 2004 32431
No. 2004–34 of June 3, 2004 32433

5 CFR

110 33535
230 33271
301 33271
316 33271
337 33271
410 33271
575 33536
831 33277
842 33277
890 31721
930 32835

7 CFR

301 .....30815, 31722, 31723
996 31725
1280 31731
1910 30997
1941 30997
1965 30997
4290 32200

Proposed Rules:
56 31039
319 33584
929 31537
981 33584

9 CFR

1 31513

Proposed Rules:
2 31537
3 31537

10 CFR

2 32836
50 33536

12 CFR

32 32435
222 33281

Proposed Rules:
30 31913
41 31913
208 31913
211 31913
222 31913
225 31913
230 31760
261a 31767
327 31922
334 31913
364 31913
568 31913
570 31913
571 31913
611 31541
612 31541
614 31541
615 31541
620 .....31541, 32905
621 32905
650 32905
651 32905
652 32905
653 32905
654 32905
655 32905

14 CFR

25 .....32849, 32851, 32853, 33551, 33553
36 31226
39 .....30999, 31000, 31002, 31287, 31514, 31518, 31519, 31520, 31867, 31870, 31872, 31874, 31876, 32247, 32249, 32250, 32251, 32855, 32857, 33285, 33555, 33557, 33558, 33561, 33833, 33834, 33836, 33837
71 .....30818, 30819, 31291, 31865, 32252, 32253, 32254, 32255, 32257, 32258, 32859, 32860, 32861, 32862, 33565, 33566
73 32258
91 31518
97 .....30820, 33287
121 31522
139 31522

Proposed Rules:
39 .....31045, 31047, 31049, 31051, 31053, 31325, 31327, 31658, 32285, 32287, 32922, 32924, 33587, 33590, 33592, 33595, 33597, 33599, 33872
71 .....32288, 32289, 32290, 32291, 32293, 32294, 32295

73 32296
158 32298

15 CFR

270 33567
Proposed Rules:
801 31771

16 CFR

Proposed Rules:
680 33324

17 CFR

239 33262
274 33262
403 33258
Proposed Rules:
150 33874
240 32784

18 CFR

1b 32436
4 32436
11 32436
12 32436
33 32436
34 32436
35 32436
36 32436
141 32440
154 32436
157 32436
260 32440
292 32436
300 32436
357 32440
365 32436
375 32436
385 32436
388 32436

20 CFR

321 32259
404 32260
Proposed Rules:
345 32927

21 CFR

1 31660
10 31660
16 31660
110 32863
510 31878
520 ....31733, 31878, 32272,
522 ....31734, 31878, 33839
558 31879
Proposed Rules:
1 30842
2 33602
201 31773
202 31773
205 31773
208 31773
209 31773
211 31773
226 31773
312 32467

24 CFR

203 33524
570 32774
1000 34020
Proposed Rules:
990 31055

26 CFR

1 ....33288, 33571, 33840

27 CFR

4 33572
5 33572
7 33572

29 CFR

1910 31880
1926 31880
4022 33302
4044 33302
Proposed Rules:
1910 31927
1926 31777
2200 33878

30 CFR

915 30821
920 33848
948 33851

31 CFR

515 33768

32 CFR

18 31291
57 32662

33 CFR

67 30826
100 ....31293, 31294, 32273
101 33574
104 33574
110 32444
117 ....30826, 30827, 31005,
31735, 32446, 33854
147 33856
151 32864
165 ....30828, 30831, 30833,
31294, 31737, 32448, 33304
181 33858

34 CFR

74 31708
75 31708
76 31708
80 31708

36 CFR

7 32871
242 33307
1253 32876
Proposed Rules:
13 31778

38 CFR

3 31882
4 32449
17 33575
61 31883
20 31523

39 CFR

Proposed Rules:
111 33341

40 CFR

52 ....31498, 31739, 31889,
31891, 31893, 32273, 32277,
32450, 32454, 33860, 33862
61 33865
63 ....31008, 31742, 33474
70 31498
71 31498
82 34024
141 31008
180 ....31013, 31297, 32281,
32457, 33576, 33578
282 ....33309, 33312
300 31022
Proposed Rules:
51 32684
52 ....30845, 30847, 31056,
31778, 31780, 31782, 31930,
32311, 32475, 32476, 32928
63 31783
70 33343
72 32684
73 32684
74 32684
77 32684
78 32684
82 34034
86 32804
96 32684
112 34014
141 31068
282 ....33343, 33344
1620 33879

42 CFR

Proposed Rules:
484 31248

44 CFR

64 31022
65 ....31024, 31026
67 31028
Proposed Rules:
67 31070

45 CFR

61 33866

46 CFR

10 32465
12 32465
15 32465
310 31897

47 CFR

0 33580
2 ....31904, 32877
25 ....31301, 31745
73 ....31904, 32282, 32283
74 ....31904, 33869
87 32877
90 31904
95 32877
101 31745
Proposed Rules:
2 33698
25 33698
54 31930
73 ....30853, 30854, 30855,
30856, 30857, 33698

48 CFR

1 30835
36 30835
53 30835
206 31907
219 31909
225 31910
227 31911
242 31912
252 ....31910, 31911
Proposed Rules:
212 31939
225 31939
252 31939

49 CFR

191 32886
192 32886
195 32886
199 32886
393 31302
567 31306
571 ....31034, 31306
574 31306
575 31306
597 31306
Proposed Rules:
563 32932
571 ....31330, 32954
578 32963
588 32954
594 32312

50 CFR

17 ....31460, 31523
100 33307
216 31321
222 32898
223 ....31035, 32898
300 31531
600 31531
622 33315
635 ....30837, 33321
648 ....30839, 30840, 32900,
33580
660 ....31751, 31758
679 ....32283, 32284, 32901,
33581
Proposed Rules:
17 ....31073, 31552, 31569,
32966
18 31582
20 32418
21 31074
223 33102
224 ....30857, 33102
679 31085

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.

RULES GOING INTO EFFECT JUNE 17, 2004

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Radionuclides other than radon from DOE facilities and from Federal facilities other than NRC licensees and not covered by Subpart H
  - Correction; published 6-17-04

Air quality implementation plans; approval and promulgation; various States:
- California; published 5-18-04

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
- Acepromazine maleate injectable solution; published 6-17-04
- Levamisole powder for oral solution
  - Correction; published 6-17-04

HOMELAND SECURITY DEPARTMENT

Transportation Security Administration

Sensitive security information protection; published 5-18-04

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
- Maryland; published 6-17-04
- West Virginia; published 6-17-04

TRANSPORTATION DEPARTMENT

Sensitive security information protection; published 5-18-04

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Boeing; published 6-2-04
- Lockheed; published 5-13-04

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
- Modified accelerated cost recovery system property acquired in like-kind exchange or as result of involuntary conversion; depreciation
  - Changes in use; published 6-17-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:
- Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Grapes grown in—
- California; comments due by 6-21-04; published 4-22-04 [FR 04-09097]

Onions (sweet) grown in—
- Washington and Oregon; comments due by 6-25-04; published 4-26-04 [FR 04-09426]

Onions grown in—
- Idaho and Oregon; comments due by 6-21-04; published 5-21-04 [FR 04-11514]

Raisins produced from grapes grown in—
- California; comments due by 6-21-04; published 4-22-04 [FR 04-09098]

Research and promotion programs:
- Organic producers and marketers; exemption from assessments for research and promotion activities; comments due by 6-25-04; published 5-26-04 [FR 04-11878]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):
- Brucellosis in cattle, bison, and swine—
  - Fluorescense polarization assay; official test addition; comments due by 6-21-04; published 5-6-04 [FR 04-10311]

Plant-related quarantine, foreign:
- Potato brown rot prevention; comments due by 6-22-04; published 4-23-04 [FR 04-09262]

AGRICULTURE DEPARTMENT

Forest Service

National recreation areas:
- Sawtooth National Recreation Area, ID; private lands—
  - Residential outbuilding size increase; comments due by 6-21-04; published 4-22-04 [FR 04-09102]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Atlantic highly migratory species—
  - Atlantic tuna and tuna-like species; comments due by 6-21-04; published 5-6-04 [FR 04-10256]
- West Coast States and Western Pacific fisheries—
  - West Coast salmon; comments due by 6-22-04; published 6-7-04 [FR 04-12809]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:
- Small business specialist review threshold; comments due by 6-22-04; published 4-23-04 [FR 04-09269]
- Small disadvantaged businesses and leader company contracting; comments due by 6-22-04; published 4-23-04 [FR 04-09270]

Civilian health and medical program of uniformed services (CHAMPUS):
- TRICARE program—
  - Anesthesiologist's assistants inclusion as authorized providers and cardiac rehabilitation in freestanding cardiac rehabilitation facilities coverage; comments due by 6-21-04; published 5-21-04 [FR 04-11464]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:
- Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Virginia; comments due by 6-24-04; published 5-25-04 [FR 04-11771]

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 6-21-04; published 5-21-04 [FR 04-11559]
- California and Nevada; comments due by 6-21-04; published 5-20-04 [FR 04-11335]
- Illinois; comments due by 6-23-04; published 5-24-04 [FR 04-11557]
- Indiana; comments due by 6-21-04; published 5-20-04 [FR 04-11337]
- Maryland; comments due by 6-24-04; published 5-25-04 [FR 04-11773]
- Pennsylvania; comments due by 6-23-04; published 5-24-04 [FR 04-11668]

Environmental statements; availability, etc.:
- Coastal nonpoint pollution control program—
  - Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Dihydroazadirachtin, etc.; comments due by 6-22-04; published 4-23-04 [FR 04-09136]

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 6-21-04; published 5-20-04 [FR 04-11217]
  - National priorities list update; comments due by 6-21-04; published 5-20-04 [FR 04-11218]

Water pollution control:
- Ocean dumping; site designations—
  - Rhode Island Sound, RI; comments due by 6-21-04; published 4-30-04 [FR 04-09720]

Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; Open for comments until further notice; published 12-30-99 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
California; comments due by 6-25-04; published 5-26-04 [FR 04-11919]
South Dakota; comments due by 6-25-04; published 5-21-04 [FR 04-11545]
Texas; comments due by 6-25-04; published 5-21-04 [FR 04-11541]
Washington; comments due by 6-25-04; published 5-21-04 [FR 04-11546]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:
Physicians referrals to health care entities with which they have financial relationships (Phase II); comments due by 6-24-04; published 3-26-04 [FR 04-06668]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:
Olestra; comments due by 6-23-04; published 5-24-04 [FR 04-11502]

Human drugs:
Labeling of drug products (OTC)—
Sodium phosphate- and/or sodium biphosphate-containing rectal drug products; comments due by 6-22-04; published 3-24-04 [FR 04-06481]

Reports and guidance documents; availability, etc.:
Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Ports and waterways safety:
Democratic National Convention, Boston, MA; security zones; comments due by 6-21-04; published 5-21-04 [FR 04-11589]
Lower Mississippi River, from mile marker 778.0 to 781.0, Osceola, AR; safety zone; comments due by 6-22-04; published 4-23-04 [FR 04-09199]

INTERIOR DEPARTMENT

Indian Affairs Bureau

No Child Left Behind Act; implementation:
No Child Left Behind Negotiated Rulemaking Committee—
Bureau-funded school system; comments due by 6-24-04; published 2-25-04 [FR 04-03714]
Bureau-funded school system; comments due by 6-24-04; published 4-19-04 [FR 04-08775]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Findings on petitions, etc.—
Greater sage-grouse; comments due by 6-21-04; published 4-21-04 [FR 04-08870]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:
Administrative procedures and guidance; comments due by 6-21-04; published 4-22-04 [FR 04-09013]

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
Fixed assets; Federal credit union ownership; comments due by 6-21-04; published 4-21-04 [FR 04-09002]
Health savings accounts; Federal credit unions acting as trustees and custodians; comments due by 6-25-04; published 5-26-04 [FR 04-11903]

NUCLEAR REGULATORY COMMISSION

Environmental statements; availability, etc.:
Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Boeing; comments due by 6-21-04; published 5-7-04 [FR 04-10383]
Cessna; comments due by 6-22-04; published 4-26-04 [FR 04-09115]
Eagle Aircraft (Malaysia) Sdn. Bhd.; comments due by 6-26-04; published 5-27-04 [FR 04-11876]
Engine Components Inc. (ECI); comments due by 6-21-04; published 4-20-04 [FR 04-08877]
McDonnell Douglas; comments due by 6-21-04; published 5-7-04 [FR 04-10382]
Raytheon; comments due by 6-22-04; published 4-22-04 [FR 04-09105]

Class D airspace; comments due by 6-21-04; published 4-21-04 [FR 04-09075]
Class D and E airspace; comments due by 6-21-04; published 4-21-04 [FR 04-09076]
Class E airspace; comments due by 6-21-04; published 4-21-04 [FR 04-09077]

TRANSPORTATION DEPARTMENT

Maritime Administration

Merchant Marine training:
Midshipmen recipients of scholarships and fellowships; service obligations deferment; comments due by 6-21-04; published 5-20-04 [FR 04-11319]

TREASURY DEPARTMENT

Internal Revenue Service

Excise taxes:
Pension excise taxes; protected benefits; comments due by 6-22-04; published 3-24-04 [FR 04-06220]

Income taxes:
Alternative method for determining tax book value of assets; allocation and apportionment of expenses; cross-reference; comments due by 6-24-04; published 3-26-04 [FR 04-06620]
Qualified zone academy bonds; States and political subdivisions obligations; comments due by 6-24-04; published 3-26-04 [FR 04-06623]

VETERANS AFFAIRS DEPARTMENT

Medical benefits:
Waivers; veterans' debts arising from medical care copayments; comments due by 6-21-04; published 4-20-04 [FR 04-08881]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

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S.J. Res. 28/P.L. 108–236

Recognizing the 60th anniversary of the Allied landing at Normandy during World War II. (June 15, 2004; 118 Stat. 659)

Last List June 16, 2004

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