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Federal Register

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–25–AD; Amendment 39–13775; AD 2004–17–03]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada PW206A and PW206E Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Pratt & Whitney Canada (PWC) PW206A and PW206E turboshaft engines. That AD currently requires:

- Initial and repetitive borescope inspections of compressor turbine and power turbine blades for blade axial shift.
- Replacement of blade retaining rivets and certain rotor air seals as terminating action for the repetitive borescope inspections.

This ad requires the same actions as AD 2003–NE–25–AD but the extent of engine disassembly that triggers the required part replacements needs clarification. This AD results from reports of engine shutdowns and emergency landings due to severe vibration, resulting in exhaust gases escaping from the engine-to-exhaust nozzle interface, thereby triggering in-flight engine fire warnings. We are issuing this AD to prevent turbine blade axial shift, which could cause high levels of vibration, loss of engine torque, in-flight engine shutdown, and loss of the airframe exhaust duct.

DATES: This AD becomes effective September 24, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 29, 2003. The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 29, 2003 (68 FR 48544; August 14, 2003).

ADDRESSES: You can get the service information identified in this AD from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; 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: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with a proposed AD. The proposed AD applies to PWC PW206A and PW206E turboshaft engines. We published the proposed AD in the **Federal Register** on February 20, 2004 (69 FR 7878). That action proposed to require the same actions as AD 2003–16–10, Amendment 39–13263, but would change the description of the extent of engine disassembly that triggers the required part replacements. Those changes are needed to clarify when the parts must be replaced.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Limit the Effectivity of This AD

One commenter states that the referenced Alert Service Bulletin and Service Bulletins only address those engines with between 25 hours Total-Time-Since-New (TTSN) or Total-Time-Since-Repair (TTSR) and 600 hours TTSN or TTSR. Therefore, this AD should address the same group of engines.

We do not agree. The amount of data available is insufficient to limit the effectivity to only those engines with between 25 hours TTSN or TTSR and 600 hours TTSN or TTSR. We have not changed the AD based on this comment.

Request for Earlier Versions of Service Bulletins To Apply

One commenter states that earlier versions of the Service Bulletins should be acceptable for meeting the requirements of this AD.

We agree. There are no substantial changes between the earliest versions of the Service Bulletins and those versions referenced in the proposed AD. We have added those service bulletin references to paragraph (k) of the AD, which is the Previous Credit paragraph.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 130 PWC PW206A and PW206E turboshaft engines of the affected design in the worldwide fleet. We estimate that 15 engines installed on airplanes of U.S. registry are affected by this AD. We also estimate that it will take about 0.5 work hours per engine to perform the required actions, and that the average labor rate is $65 per work hour. Required parts will cost about $9,077 per engine. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $136,656. The manufacturer has stated that it may provide replacement parts at no cost to operators.

Regulatory Findings

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

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

(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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–25–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing Amendment 39–13263 (68 FR 48544, August 14, 2003) and by adding a new airworthiness directive (AD), Amendment 39–13775, to read as follows:

2004–17–03 Pratt & Whitney Canada: Amendment 39–13775. Docket No. 2003–NE–25–AD. Supersedes AD 2003–16–10, Amendment 39–13263.

Effective Date

(a) This AD becomes effective September 24, 2004.

Affected ADs

(b) This AD supersedes AD 2003–16–10, Amendment 39–13263.

Applicability

(c) This AD applies to Pratt & Whitney Canada (PWC) PW206A and PW206E turboshaft engines. These engines are installed on, but not limited to, MD Helicopters, Inc. Model MD–900 helicopters.

Unsafe Condition

(d) This AD is prompted by reports of engine shutdowns and emergency landings due to severe vibration, resulting in exhaust gases escaping from the engine-to-exhaust nozzle interface, thereby triggering in-flight engine fire warnings. The actions specified in this AD are intended to prevent turbine blade axial shift, which could cause high levels of vibration, loss of engine torque, in-flight engine shutdown, and loss of the airframe exhaust duct.

Compliance

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

Initial Sequence of Borescope Inspections

(f) Perform an initial sequence of borescope inspections of compressor turbine blades and power turbine blades for blade axial shift within the turbine disks. Use paragraph 3. of Accomplishment Instructions of PWC Alert Service Bulletin (ASB) No. PW200–72–A28242, Revision 1, dated October 2, 2002, for the borescope inspection and determination of blade shift. Do the inspections at the following times:

(1) Within 25 flight hours accumulated, or 30 days after the effective date of this AD, whichever occurs earlier.

(2) After 30 flight hours, but before 50 flight hours accumulated since inspection of paragraph (f)(1) of this AD.

(3) After 80 flight hours, but before 100 flight hours accumulated since inspection of paragraph (f)(1) of this AD.

(4) After 180 flight hours, but before 200 flight hours accumulated since inspection of paragraph (f)(1) of this AD.

Repetitive Borescope Inspections

(g) Thereafter, perform repetitive borescope inspections at intervals of not less than 280 nor more than 300 flight hours since-last-inspection. Use paragraph 3. of Accomplishment Instructions of PWC ASB No. PW200–72–A28242, Revision 1, dated October 2, 2002, for the borescope inspections and determination of blade shift.

Disposition

(h) If you find any blade shift, remove engine from service before further flight and perform rivet and rotor air seal replacements, as specified in paragraphs (i)(1) through (i)(3) of this AD, to return the engine to service.

Terminating Action

(i) At the next engine shop visit when access is available to subassemblies, such as modules, accessories, and components, or at the next engine overhaul, whichever occurs first, but before accumulating 1,800 flight hours from the effective date of this AD or before December 31, 2009, whichever occurs first, do the following:

(1) Replace the compressor turbine blade retaining rivets with new P/N retaining rivets, and the No. 4 bearing rear rotor air seal with the new P/N No. 4 bearing rear rotor air seal. Use paragraph 3., Part A, of Accomplishment Instructions of SB No. PW200–72–28069, Revision 5, dated February 10, 2003.

(2) Replace the No. 3 bearing rotating air seal with the new P/N air seal, and the No. 4 bearing front rotor air seal with the new P/N No. 4 bearing front rotor air seal. Use paragraph 3., Part B, of Accomplishment Instructions of SB No. PW200–72–28069, Revision 5, dated February 10, 2003.

(3) Replace the power turbine blade retaining rivets with new P/N power turbine blade retaining rivets. Use paragraph 3. of Accomplishment Instructions of SB No. PW200–72–28239, Revision 2, dated February 10, 2003.

(j) Completing the actions in paragraphs (i)(1) through (i)(3) of this AD terminates all inspection requirements of this AD.

Previous Credit

(k) Previous credit is allowed:

(1) For performing the initial sequence for borescope inspections in paragraph (f) of this AD, that were done using AD 2003–16–10.

(2) For terminating action in paragraphs (i)(1) through (i)(3) of this AD that was done using the Accomplishment Instructions of one of the following, before the effective date of this AD:

(i) SB No. PW200–72–28069, dated June 10, 1997

(ii) SB No. PW200–72–28069, Revision 1, dated September 8, 1997

(iii) SB No. PW200–72–28069, Revision 2, dated December 18, 1997

(iv) SB No. PW200–72–28069, Revision 3, dated November 30, 1998

(v) SB No. PW200–72–28069, Revision 4, dated December 27, 2000

(vi) SB No. PW200–72–28069, Revision 5, dated February 10, 2003

(vii) SB No. PW200–72–28239, dated September 5, 2002

(viii) SB No. PW200–72–28239, Revision 1, dated December 5, 2002

(ix) SB No. PW200–72–28239, Revision 2, dated February 10, 2003

Alternative Methods of Compliance

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

Material Incorporated by Reference

(m) You must use the Pratt & Whitney Canada Service Bulletins and Alert Service Bulletin listed in Table 1 of this AD to perform the inspections and replacement actions required by this AD. The incorporation by reference of this publication was approved previously by the Director of the Federal Register as of August 29, 2003 (68 FR 48544; August 14, 2003), in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G1A1. You can review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive

Park, Burlington, MA; 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.* Table 1 follows:

TABLE 1.—INCORPORATION BY REFERENCE

Service bulletin	Page number(s)	Revision	Date
PW200–72–A28242, Total Pages—7	All	1	October 2, 2002.
PW200–72–28069, Total Pages—17	All	5	February 10, 2003.
PW200–72–28239, Total Pages—20	All	2	February 10, 2003.

Related Information

(n) Transport Canada issued airworthiness directive CF–2003–06, dated February 4, 2003, which pertains to the subject of this AD, in order to assure the airworthiness of these PWC PW206A and PW206E turboshaft engines in Canada.

Issued in Burlington, Massachusetts, on August 12, 2004.

Ann Mollica,

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

[FR Doc. 04–18998 Filed 8–19–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–04–AD; Amendment 39–13774; AD 2004–17–02]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 65, 90, 99, 100, 200, 300, and 1900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Raytheon Aircraft Company (Raytheon) 65, 90, 99, 100, 200, 300, and 1900 series airplanes. This AD requires you to repetitively inspect the engine controls/cross shaft/pedestal for proper installation and torque, re-torque the cross shaft attach bolt, modify the pedestal, and replace the engine controls cross shaft hardware. Modification of the pedestal and replacement of the engine controls cross shaft hardware is terminating action for the repetitive inspection requirements. This AD is the result of numerous reports of loose bolts on the pedestal attachment of the throttle/prop cross shaft assembly. We are issuing this AD to detect and correct loose bolts not securing the pedestal cross shaft, which could result in limited effectiveness of the control levers. This failure could lead to an aborted takeoff.

DATES: This AD becomes effective on October 4, 2004.

As of October 4, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

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

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–04–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received numerous reports of loose bolts not securing the pedestal cross shaft on Raytheon Models B300, C90A, and 1900 series airplanes. Investigation revealed that the bolt securing the pedestal cross shaft can loosen in time and fall out. When the bolt backs out, the cross shaft will flex with throttle or propeller control application. This flexing of the cross shaft limits the effectiveness of the control levers and the operation of the landing gear warning, prop reverse not ready, autofeather, and ground idle micro switches (on models with switches at this location).

The 65, 90, 99, 100, 200, 300, and 1900 Series airplanes all have a similar type design in the area affected by this AD.

What is the potential impact if FAA took no action? This failure could limit the effectiveness of the engine control levers and result in an aborted takeoff due to failure to make takeoff power.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon 65, 90, 99, 100, 200, 300, and 1900 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 26, 2004 (69 FR 22392). The NPRM proposed to require you to repetitively inspect the engine controls/cross shaft/pedestal for proper installation and torque, re-torque the cross shaft attach bolt, modify the pedestal, and replace the engine controls cross shaft hardware.

Comments

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

Comment Issue: The AD Is Not Needed

What is the commenter's concern? The commenter is responsible for a large fleet (Models 99, 200, and 1900) of 62 airplanes that are affected by this AD. The fleet has accumulated more than 450,000 flight hours. The commenter states that the company has never experienced the problem in the fleet, and that regular inspection in the subject area and check of the subject bolts for tightness eliminates the problem. Therefore, the AD is not necessary.

What is FAA's response to the concern? The FAA disagrees with the commenter's statement that, since the company has not experienced the problem in the fleet, that an AD is not necessary. The AD action was prompted by several reports of loose bolts not securing the pedestal cross shaft on Raytheon Models B300, C90A, and 1900 series airplanes. After issuance of a manufacturer's safety notice, FAA received more reports of loose bolts. Our decision to issue an AD action is based on reports from the field, the likelihood that the condition is likely to exist or develop on other products of this same type design, and the potential impact to

an aircraft with the subject condition if no action was taken.

Therefore, to ensure that all affected airplanes do not have the unsafe condition, we are not changing the final rule AD action based on this comment.

Conclusion

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

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

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

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 5,025 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to do the inspection and re-torque of the cross attach bolt:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $65 per hour = $65	Not Applicable	$65	$65 × 5,025 = $326,625

We estimate the following costs to do the modification of the pedestal and replacement of the engine controls cross shaft hardware:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $65 per hour = $130	$10	$140	$140 × 5,025 = $703,500.

Regulatory Findings

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

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2004–CE–04–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–17–02 Raytheon Aircraft Company: Amendment 39–13774; Docket No. 2004–CE–04–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on October 4, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
(1) 65–A90, B90, C90, and C90A	LJ–76, LJ–114 through LJ–1691.
(2) E90	LW–1 through LW–347.
(3) F90	LA–2 through LA–236.
(4) 99, 99A, A99A, B99 and C99	U–1 through U–239.
(5) 100 and A100	B–1 through B–94, B–100 through B–204, and B–206 through B–247.
(6) B100	BE–1 through BE–137.

Model	Serial Nos.
(7) 200 and B200	BB–2, BB–6 through BB–185, BB–187 through BB–202, BB–204 through BB–269, BB–271 through BB–407, BB–409 through BB–468, BB–470 through BB–488, BB–490 through BB–509, BB–511 through BB–529, BB–531 through BB–550, BB–552 through BB–562, BB–564 through BB–572, BB–574 through BB–590, BB–592 through BB–608, BB–610 through BB–626, BB–628 through BB–646, BB–648 through BB–664, BB–666 through BB–694, BB–696 through BB–797, BB–799 through BB–822, BB–824 through BB–870, BB–872 through BB–894,BB–896 through BB–990, BB–992 through BB–1051, BB–1053 through BB–1092, BB–1094, BB–1095, BB–1099 through BB–1104, BB–1106 through BB–1116, BB–1118 through BB–1184, BB–1186 through BB–1263, BB–1265 through BB–1288, BB–1290 through BB–1300, BB–1302 through BB–1313, BB–1315 through BB–1384, BB–1389 through BB–1425, BB–1427 through BB–1447, BB–1449, BB–1450, BB–1452, BB–1453, BB–1455, BB–1456, BB–1458 through BB–1683, BB–1685 through BB–1716, BB–1718 through BB–1720, BB–1722, BB–1723, BB–1725, BB–1726, BB–1728 through BB–1826.
(8) 200C and B200C	BL–1 through BL–23, BL–25 through BL–57, BL–61 through BL–72, and BL–124 through BL–147.
(9) 200CT and B200CT	BN–1 through BN–4.
(10) 200T and B200T	BT–1 through BT–38, and BB–1314.
(11) 300 and 300LW	FA–1 through FA–230; and FF–1 through FF–19.
(12) B300	FL–1 through FL–379.
(13) B300C	FM–1 through FM–10; and FN–1.
(14) 1900	UA–3.
(15) 1900C	UB–1 through UB–74 and UC–1 through UC–174.
(16) 1900D	UE–1 through UE–439.
(17) 65–A90–1 (U–21A or U–21G)	LM–1 through LM–141.
(18) 65–A90–2 (RU–21B)	LS–1 through LS–3.
(19) 65–A90–3 (U–21 Series)	LT–1 and LT–2.
(20) 65–A90–4 (U–21 Series)	LU–1 through LU–16.
(21) H90 (T–44A)	LL–1 through LL–61.
(22) A100–1 (U–21J)	BB–3 through BB–5.
(23) A100 (U–21F)	B–95 through B–99.
(24) A200 (C–12A and C–12C)	BC–1 through BC–75 and BD–1 through BD–30.
(25) A200C (UC–12B)	BJ–1 through BJ–66.
(26) A200CT (C–12D, FWC–12D, C–12F)	BP–1, BP–7 through BP–11, BP–19, BP–22, and BP–24 through BP–63.
(27) A200CT (RC–12D, RC–12H)	GR–1 through GR–12, and GR–14 through GR–19.
(28) A200CT (RC–12G)	FC–1 through FC–3.
(29) A200CT (RC–12K, RC–12P and RC–12Q)	FE–1 through FE–9, and FE–25 through FE–36.
(30) B200C (C–12F)	BL–73 through BL–112, and BL–118 through BL–123; BP–64 through BP–71.
(31) B200C (C–12R)	BW–1 through BW–29.
(32) B200C (UC–12M)	BV–1 through BV–10.
(33) B200C (UC–12F)	BU–1 through BU–10.
(34) 1900C (C–12J)	UD–1 through UD–6.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of numerous reports of loose bolts on the pedestal attachment of the throttle/prop cross shaft assembly. The actions specified in this AD are intended to detect and correct loose bolts not securing the pedestal cross shaft, which could result in limited effectiveness of the control levers. This failure could lead to an aborted takeoff.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspection and torque:.		
(i) inspect the engine controls/cross shaft/pedestal for proper installation and torque; and.		
(ii) re-torque the cross attach bolt.	Initially inspect within the next 50 hours time-in-service (TIS) after October 4, 2004 (the effective date of this AD), unless already done within the last 50 hours TIS, and thereafter at intervals not to exceed 100 hours TIS until the modification in paragraph (e)(3) of this AD is done.	Follow Part I, Accomplishment Instructions of Raytheon Aircraft Company Mandatory Service Bulletin No. SB 73–3634, dated September 2003. The applicable airplane maintenance manual also addresses this issue.

Actions	Compliance	Procedures
(2) If any improper installation or wrong torque is found during any inspection required by paragraph (e)(1) of this AD, correct the installation or torque.	Before further flight after the inspection in which any improper installation or wrong torque is found.	Follow Part I, Accomplishment Instructions of Raytheon Aircraft Company Mandatory Service Bulletin No. SB 73–3634, dated September 2003. The applicable airplane maintenance manual also addresses this issue.
(3) Modify the pedestal and replace the engine controls cross shaft hardware. Modification of the pedestal and replacement of the engine controls cross shaft hardware is the terminating action for the repetitive inspection and re-torque requirements specified in paragraph (e)(1) of this AD.	At the next scheduled maintenance/inspection interval or 12 calendar months after October 4, 2004 (the effective date of this AD), whichever occurs later. You may do this modification before this time as terminating action for the repetitive inspection and re-torque requirements.	Follow Part II, Accomplishment Instructions of Raytheon Aircraft Company Mandatory Service Bulletin No. SB 73–3634, dated September 2003. The applicable airplane maintenance manual also addresses this issue.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Jeff Pretz, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4107.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Raytheon Aircraft Company Mandatory Service Bulletin No. SB 73–3634, dated September, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; 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.*

Issued in Kansas City, Missouri, on August 12, 2004.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–18923 Filed 8–19–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

15 CFR Part 303

[Docket No. 040609177–4224–02]

RIN 0625–AA65

Changes in the Insular Possessions Watch, Watch Movement and Jewelry Programs

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: The Departments of Commerce and the Interior (the Departments) amend their regulations governing watch duty-exemption allocations and the watch and jewelry duty-refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands). The rule amends existing regulations by updating the maximum total value of watch components per watch that is eligible for duty-free entry into the United States under the insular program.

DATES: This rule is effective August 20, 2004.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526.

SUPPLEMENTARY INFORMATION: : The Departments of Commerce and the Interior (the Departments) issue this rule to amend their regulations governing watch duty-exemption allocations and the watch and jewelry duty-refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands). The background information and purpose of this rule is found in the preamble to the proposed rule (69 FR 39375, June 30, 2004) and is not repeated here.

The Departments amend 15 CFR 303.14(b)(3) by raising the maximum total value of watch components per watch that is eligible for duty-free entry into the U.S. from $500 to $800. The insular watch program producers requested an increase because of a substantial increase in the price of gold and the weakness of the dollar against the euro over the last several years. Also, there has not been an adjustment in the maximum value since 1998. Raising the value level of watch components that may be used in the assembly of duty-free watches will help producers maintain the degree of diversity in the kinds of watches they assemble, thereby affording them an opportunity to maintain or hopefully increase shipments and increase territorial employment.

ITA received four comments in response to the proposed rule and request for comments. The commenters expressed strong support for the proposed rule and thought that the long-term effect would be positive for the insular watch industry and its employees. Accordingly, the Departments adopt the provisions in the proposed rule without change.

Administrative Law Requirements

Administrative Procedure Act

The Departments waive the 30-day delay in effectiveness for this rule because this rule relieves a restriction. (See 5 U.S.C. 553(d)(1)). By raising the maximum value of watch components per watch that are eligible for duty-free entry, this rule will allow producers to import higher value watches than were allowed prior to the adoption of this rule. Therefore, this rule is effective upon publication.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule and is not repeated here. No comments were received regarding the economic impact of this rule on small entities. As a result, a final regulatory flexibility analysis is not required and has not been prepared.

Paperwork Reduction Act

This proposed rulemaking does not contain revised collection of information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Collection activities are currently approved by the Office of Management and Budget under control numbers 0625–0040 and 0625–0134.

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

E.O. 12866

It has been determined that the rulemaking is not significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and recordkeeping requirements, Virgin Islands, Watches and jewelry.

■ For reasons set forth above, the Departments amend 15 CFR Part 303 as follows:

PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAMS

■ 1. The authority citation for 15 CFR Part 303 reads as follows:

Authority: Pub. L. 97–446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103–465, 108 Stat. 4991; Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106–36, 113 Stat. 167.

§ 303.14 [Amended]

■ 2. Section 303.14 is amended by removing ''$500'' from the first sentence of paragraph (b)(3) and adding ''$800'' in its place.

James J. Jochum,

Assistant Secretary for Import Administration, Department of Commerce.

David B. Cohen,

Deputy Assistant Secretary for Insular Affairs, Department of the Interior.

[FR Doc. 04–19139 Filed 8–19–04; 8:45 am]

BILLING CODE 3510–DS–P; 4310–93–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AG01

Federal Old-Age, Survivors and Disability Insurance; Coverage of Residents in the Commonwealth of the Northern Mariana Islands (CNMI); Coverage of Ministers, Members of the Clergy and Christian Science Practitioners

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are revising several sections of our regulations to reflect that, for purposes of the title II benefit program (title II of the Social Security Act), we consider the Commonwealth of the Northern Mariana Islands (CNMI) to be a part of the United States. The revisions take into account the status of the CNMI under current law and explain the coverage rules for work performed in the CNMI. The revisions also explain that the alien nonpayment provisions, which generally place limits on the payment of title II benefits to aliens (*i.e.* non-United States citizens or nationals) who are outside the United States, do not apply to aliens in the CNMI. We are also revising our title II rules on coverage for ministers, members of religious orders, or Christian Science practitioners, to reflect a provision in the Ticket to Work and Work Incentives Improvement Act of 1999 that allows a duly ordained, commissioned or licensed minister, a member of a religious order, or a Christian Science practitioner who previously opted not to be covered under Social Security, a two-year window in which to make an irrevocable election to be covered.

DATES: Effective Date: These regulations are effective on September 20, 2004.

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0020 or TTY (410) 966–5609, for information about this notice. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov.*

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs.*

SUPPLEMENTARY INFORMATION:

A. CNMI Changes

Under Public Law Number 94–241 enacted on March 24, 1976, and codified at 48 U.S.C. 1801, section 502(a) of the *Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America* (the Covenant) provides that certain laws of the United States will apply to the CNMI. The laws include, under section 502(a)(1) of the Covenant, section 228 of title II of the Social Security Act (the Act), and title XVI of the Act. The laws also include ''those laws'' not specifically described in section 502(a)(1) ''which are applicable to Guam and which are of general application to the several States.'' Under section 502(a)(2) of the Covenant, such laws apply to the CNMI ''as they are applicable to the several States.'' Similarly, section 606 of the Covenant applies the tax and benefit provisions of the United States Social Security System to the CNMI, as they apply to Guam. Guam is considered part of the United States for purposes of title II of the Social Security Act. *See* 42 U.S.C. 410(i).

While we previously revised our regulations to reflect that the CNMI is considered to be a part of the United States for purposes of the transitional insured provision for special age-72 benefits in section 228 of the Act (*see* 20 CFR 404.381) and for purposes of the SSI program (*see* 20 CFR 416.215), we have never previously revised our regulations dealing with entitlement to retirement, survivors, and disability insurance benefits under title II to reflect the treatment of the CNMI under the Covenant. We are, therefore, revising the following sections of our regulations to reflect the extension of the title II program to the CNMI.

Section 404.2

We are revising paragraphs (c)(5) and (c)(6) of section 404.2 of our regulations to include the CNMI in our definition of both ''State'' and the ''United States,'' for purposes of administering title II of the Social Security Act. This reflects the full application of title II of the Social Security Act to the CNMI beginning January 1, 1987. *See* Presidential Proclamation No. 5564 (51 FR 40399 (Nov. 3, 1986)); *see also* Presidential Proclamation No. 4534 (42 FR 56593 (Oct. 27, 1977)).

Section 404.460(a)(1)

Section 404.460(a)(1) of our regulations describes the scope of the alien nonpayment provision of the Act, which limits the payment of Social Security benefits to aliens outside the United States. We are revising the definition of ''outside the United States'' in this section to reflect that we consider the CNMI to be a part of the United States for purposes of this section. This change is necessary to reflect that we will not apply the alien nonpayment provision to aliens residing in the CNMI, just as it is not applied to aliens residing in Guam.

Section 404.1004

Section 404.1004 of our regulations describes what work is covered as employment and defines ''State'' and ''United States'' under title II of the Social Security Act (the Act). Since, under the Covenant, we treat work in the CNMI the same as we treat work in Guam, we are revising paragraphs (b)(4), (b)(8) and (b)(9) of this section to include the CNMI in the definition of ''State'' and ''United States'' for title II purposes of the Act.

Section 404.1020

Section 404.1020 of our regulations describes the coverage of work for States and their political subdivisions and instrumentalities. Since, under the Covenant, we treat work in the CNMI the same as we treat work in Guam, we are revising § 404.1020(a)(3) of our regulations to include a reference to the CNMI directly after the reference to Guam.

Section 404.1022

Section 404.1022 of our regulations describes the coverage of employment for workers in American Samoa or Guam. Since, under the Covenant, we treat work in the CNMI the same as we treat work in Guam, we are revising paragraphs (a) and (c) of this section to reflect that work performed for a private employer in the CNMI is covered employment and that work performed for the government of the CNMI is generally excluded from covered employment.

Section 404.1093

Section 404.1093 of our regulations provides that, in using the exclusions from gross income provided under section 931 of the Internal Revenue Code (the Code), 26 U.S.C. 931, (relating to income from sources within possessions of the United States) and section 932 of the Code, 26 U.S.C. 932, (regarding coordination of U.S. and Virgin Islands taxes) for purposes of figuring your net earnings from self-employment, the term ''possession of the United States,'' as used in our regulations at 20 CFR 404.1081(a)(4)(iv), does not include the Virgin Islands, Guam or American Samoa. In describing areas affected by its exclusion from gross income, section 931(c) of the Code, 26 U.S.C. 931(c), defines the term ''specified possession'' as Guam, American Samoa and the CNMI. Therefore, we are revising § 404.1093 to include the CNMI.

Section 404.1096

Section 404.1096(d) of our regulations provides that a nonresident alien has self-employment income only if coverage is provided under a totalization agreement, but explains that residents of the Commonwealth of Puerto Rico, the Virgin Islands, Guam or American Samoa, are not considered to be nonresident aliens. Therefore, we are revising this section to reflect that residents of the CNMI are not considered to be nonresident aliens.

Section 404.1200

Section 404.1200 describes coverage for State and local government employees under section 218 of the Act. Mandatory Social Security and Medicare coverage is extended to certain services performed after July 1, 1991, by individuals who are employees of a State (other than the District of Columbia, Guam, or American Samoa). Since the CNMI is treated like Guam under the terms of the Covenant, we are revising paragraph (b) of this section to add the Commonwealth of the Northern Mariana Islands after Guam.

Section 404.1202

Under title II of the Act, section 210(h) defines the term ''State'' to include ''the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.'' Section 218(b)(1) of the Act refines the preceding definition solely for purposes of section 218, which concerns voluntary agreements for coverage of State and local employees, by eliminating the District of Columbia, Guam, and American Samoa. The definition of the term ''State'' in § 404.1202(b) is based on the definition in section 218 of the Act. Since the CNMI is treated like Guam under the terms of the Covenant, we are revising § 404.1202(b) to reflect that the CNMI is not considered a State under section 218. Under the requirements of the Covenant, it will be treated as a State for various other purposes under title II, much like the entities listed in section 210(h) of the Act.

B. Coverage of Ministers, Members of Religious Orders, and Christian Science Practitioners

Section 1402(e) of the Code, 26 U.S.C. 1402(e), allows a duly ordained, commissioned, or licensed minister, a member of a religious order, or a Christian Science practitioner, to file, under the terms of that section, for an exemption from payment of SECA (Self-Employment Contributions Act) taxes. Section 1402(e) also provides that an exemption received pursuant to section 1402(e) is irrevocable. However, section 403 of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170) amended the Code to permit individuals who previously opted for the exemption under section 1402(e)(1), a window of time in which to revoke the exemption. Once the exemption is revoked, the individual may not file any further applications for exemption under section 1402(e)(1). This provision is effective for services performed in taxable years beginning January 1, 2000. Depending on the date of the individual's election, the provisions of this law apply to services performed in either the individual's first or second taxable year beginning after December 31, 1999, and for all succeeding taxable years. The application for revocation of the exemption from coverage must be filed with the Internal Revenue Service (usually as part of the tax return) no later than the due date of the Federal Income Tax Return (including extensions) for the applicant's second taxable year beginning after December 31, 1999.

Congress has permitted revocations of the exemption twice in the past. The Social Security Amendments of 1977 (section 316 of Public Law 95–216) and the Tax Reform Act of 1986 (section 1704 of Public Law 99–514) each contained a provision for revocation within certain time periods. Section 404.1071(a) (Ministers and Members of a Religious Order) reflects the revocation period allowed in 1986. We

are revising § 404.1071(a) to reflect the revocation period allowed in 1977 and the most recent period of revocation offered by section 403 of the Ticket to Work and Work Incentives Improvement Act of 1999.

Public Comments

On April 7, 2004, we published proposed rules in the **Federal Register** at 69 FR 18310 and provided a 60-day period for interested parties to comment. We received no comments. We are, therefore, publishing these rules unchanged, except for minor technical corrections in accordance with the descriptions in the preamble to these rules.

Regulatory Procedures

Executive Order 12866, as Amended by Executive Order 13258

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities, as they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules impose no new reporting or record keeping requirements subject to clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: August 2, 2004.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set forth in the preamble, we are amending subparts A, E, K and M of part 404 of title 20 of the Code of Federal Regulations as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart A—[Amended]

■ 1. The authority citation for subpart A of part 404 is revised to read as follows:

Authority: Secs. 203, 205(a), 216(j), and 702(a)(5) of the Social Security Act (42 U.S.C. 403, 405(a), 416(j), and 902(a)(5)) and 48 U.S.C. 1801.

■ 2. Section 404.2 is amended by revising paragraphs (c)(5) and (6) to read as follows:

§ 404.2 General definitions and use of terms.

* * * * *

(c) Miscellaneous. * * *

(5) *State,* unless otherwise indicated, includes:

(i) The District of Columbia,

(ii) The Virgin Islands,

(iii) The Commonwealth of Puerto Rico effective January 1, 1951,

(iv) Guam and American Samoa, effective September 13, 1960, generally, and for purposes of sections 210(a) and 211 of the Act effective after 1960 with respect to service performed after 1960, and effective for taxable years beginning after 1960 with respect to crediting net earnings from self-employment and self-employment income,

(v) The Territories of Alaska and Hawaii prior to January 3, 1959, and August 21, 1959, respectively, when those territories acquired statehood, and

(vi) The Commonwealth of the Northern Mariana Islands effective January 1, 1987; Social Security coverage for affected employees of the government of the CNMI is also effective on January 1, 1987, under section 210(a)(7)(E) of the Social Security Act.

(6) *United States,* when used in a geographical sense, includes, unless otherwise indicated:

(i) The States,

(ii) The Territories of Alaska and Hawaii prior to January 3, 1959, and August 21, 1959, respectively, when they acquired statehood,

(iii) The District of Columbia,

(iv) The Virgin Islands,

(v) The Commonwealth of Puerto Rico effective January 1, 1951, (vi) Guam and American Samoa, effective September 13, 1960, generally, and for purposes of sections 210(a) and 211 of the Act, effective after 1960 with respect to service performed after 1960, and effective for taxable years beginning after 1960 with respect to crediting net earnings from self-employment and self-employment income, and

(vii) The Commonwealth of the Northern Mariana Islands effective January 1, 1987.

* * * * *

Subpart E—[Amended]

■ 3. The authority citation for subpart E of part 404 is revised to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 216(1), 223(e), 224, 225, 702(a)(5), and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 416(1), 423(e), 424a, 425, 902(a)(5) and 1320a–8a) and 48 U.S.C. 1801.

■ 4. Section 404.460 is amended by revising paragraph (a)(1) to read as follows:

§ 404.460 Nonpayment of monthly benefits of aliens outside the United States.

(a) * * *

(1) For nonpayment of benefits under this section, it is necessary that the beneficiary be an alien, and while an alien, be outside the United States for more than six full consecutive calendar months. In determining whether, at the time of a beneficiary's initial entitlement to benefits, he or she has been outside the United States for a period exceeding six full consecutive calendar months, not more than the six calendar months immediately preceding the month of initial entitlement may be considered. For the purposes of this section, *outside the United States* means outside the territorial boundaries of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

* * * * *

Subpart K—[Amended]

■ 5. The authority citation for subpart K of part 404 is revised to read as follows:

Authority: Secs. 202(v), 205(a), 209, 210, 211, 229(a), 230, 231, and 702(a)(5) of the Social Security Act (42 U.S.C. 402(v), 405(a), 409, 410, 411, 429(a), 430, 431, 902(a)(5)) and 48 U.S.C. 1801.

■ 6. Section 404.1004 is amended by revising the section heading and paragraphs (b)(4), (b)(8) and (b)(9) to read as follows:

§ 404.1004 What work is covered as employment?

* * * * *

(b) * * *

(4) *Citizen of the United States* includes a citizen of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa or the Commonwealth of the Northern Mariana Islands.

* * * * *

(8) *State* refers to the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(9) *United States* when used in a geographical sense means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§404.1020 [Amended]

■ 7. In section 404.1020, paragraph (a)(3) is amended by adding ''the Commonwealth of the Northern Mariana Islands,'' after ''Guam,''.

■ 8. Section 404.1022 is amended by revising the section heading, and paragraphs (a) and (c) to read as follows:

§ 404.1022 American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands.

(a) *Work in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands.* Work in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands for a private employer is covered as employment the same as in the 50 States. Work done by a resident of the Republic of the Philippines working in Guam on a temporary basis as a nonimmigrant alien admitted to Guam under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act is excluded from coverage regardless of the employer.

* * * * *

(c) *Work for Guam, the Commonwealth of the Northern Mariana Islands, or a political subdivision or wholly owned instrumentality of Guam or the Commonwealth of the Northern Mariana Islands.* Work as an officer or employee (including a member of the legislature) of the government of Guam, or the Commonwealth of the Northern Mariana Islands, their political subdivisions, or any wholly owned instrumentality of any one or more of these, is excluded from coverage as employment. However, the exclusion does not apply to employees classified as temporary or intermittent unless the work—

(1) Covered by a retirement system established by a law of Guam or the Commonwealth of the Northern Mariana Islands;

(2) Done by an elected official;

(3) Done by a member of the legislature; or

(4) Done in a hospital or penal institution by a patient or inmate of the hospital or penal institution.

* * * * *

■ 9. Section 404.1071 is amended by revising paragraph (a) to read as follows:

§ 404.1071 Ministers and members of religious orders.

(a) If you are a duly ordained, commissioned, or licensed minister of a church, or a member of a religious order who has not taken a vow of poverty, the services you perform in the exercise of your ministry or in the exercise of duties required by the order (§ 404.1023(c) and (e)) are a trade or business unless you filed for and were granted an exemption from coverage under section 1402(e) of the Code, and you did not revoke such exemption in accordance with the Social Security Amendments of 1977, section 1704(b) of the Tax Reform Act of 1986, or section 403 of the Ticket to Work and Work Incentives Improvement Act of 1999. An exemption cannot be granted if you filed a valid waiver certificate under the provisions of section 1402(e) that apply to taxable years ending before 1968.

* * * * *

§ 404.1093 [Amended]

■ 10. Section 404.1093 is amended by adding ''the Commonwealth of the Northern Mariana Islands,'' after ''Guam,''.

§ 404.1096 [Amended]

■ 11. Section 404.1096 is amended in paragraph (d) by adding '', the Commonwealth of the Northern Mariana Islands,'' after ''Guam''.

Subpart M—[Amended]

■ 12. The authority citation for subpart M of part 404 is revised to read as follows:

Authority: Secs. 205, 210, 218, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 410, 418, and 902(a)(5)); sec. 12110, Pub. L. 99–272, 100 Stat. 287 (42 U.S.C. 418 note); sec. 9002, Pub. L. 99–509, 100 Stat. 1970.

§ 404.1200 [Amended]

■ 13. Section 404.1200 is amended in paragraph (b) by adding ''the Commonwealth of the Northern Mariana Islands,'' after ''Guam,''.

§ 404.1202 [Amended]

■ 14. In section 404.1202(b), the definition of ''State'' is amended by adding '', the Commonwealth of the Northern Mariana Islands,'' after ''Guam''.

[FR Doc. 04–19118 Filed 8–19–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076–AE53

Law and Order on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule and request for comments.

SUMMARY: This document adds the Albuquerque Indian School property (Southwest Region, New Mexico) to the existing Santa Fe Indian School property listing of Courts of Indian Offenses. This will establish a judicial forum for the administration of justice within the property.

DATES: This rule is effective on August 20, 2004. Comments must be received on or before October 19, 2004.

ADDRESSES: You may submit comments, identified by the number 1076-AE53 by any of the following methods:

- *Federal rulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 208–5113.
- *Mail:* Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS 320–SIB, Washington, DC 20240.
- *Hand delivery:* Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS 320–SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Iris A. Drew, Tribal Government Officer, Southwest Regional Office, Bureau of Indian Affairs, P.O. Box 26567, 1001 Indian School Road NW., Albuquerque, New Mexico 87125–6567, at (505) 563–3530; or Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue NW., MS 320–SIB, Washington, DC 20240, at (202) 513–7629.

SUPPLEMENTARY INFORMATION: The authority to issue this rule is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for ''Indian judges.'' See *Tillet* v. *Hodel*, 730 F. Supp., 381 (W.D. Okla. 1990), *aff'd* 931 F.2d 636 (10th Cir. 1991), *United States* v. *Clapox*, 35 F. 575 (D. Ore. 1888). This rule is published in the exercise of the rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.1.

On January 29, 1993, the United States of America (''Grantor''), by the

Secretary of the Interior acting pursuant to 25 U.S.C. 2202 and 465 and the regulation at 25 CFR 151.3(a)(2) and (3), for the purpose of placing the real property described below (the ''property'') in trust for the equal benefit of the Indian Pueblos of New Mexico (the ''Pueblos'') as tenants in common, and in consideration of the reconveyance of the property by the Pueblos to the Grantor, and other valuable consideration, conveyed, transferred and quitclaim to itself in trust jointly for the equal benefit of the following Pueblos:

Pueblo of Acoma
Pueblo of Cochiti
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of San Felipe
Pueblo of Sandia
Pueblo of San Ildefonso
Pueblo of Santa Ana
Pueblo of San Juan
Pueblo of Santa Clara
Pueblo of Santo Domingo
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
Pueblo of Zuni

All of its right, title and interest in and to the following real estate: A tract of land containing 44.201 acres, situated within the east half (E½), Section 7 and the west half (W½), Section 8, T.10 N., R.3 E., New Mexico Principal Meridian, Bernalillo County, State of New Mexico, subject to all existing reservations and recorded at the Land Titles and Records Office, Albuquerque, New Mexico, as Document No. 050–001–93.

On May 24, 1994, 1.9592 acres was transferred to the 19 Pueblos and includes the tract of land being the original Old Indian School boundary, that portion of the Indian Health Service situation within the east half (E½), Section 7, T.10 N., R.3 E., New Mexico Principal Meridian, Bernalillo County, New Mexico, subject to all existing reservations and recorded at the Land Titles and Records Office, Albuquerque, New Mexico, as Document No. 050–001–97.

Trust status of the Albuquerque Indian School property has been in litigation since 1993. The December 2002 Federal district court decision in *Neighbors for Rational Development* v. *Gale Norton, Secretary of the Interior,* CIV. 99–0059 (D.N.M.), upheld the validity of the trust transfer to the Pueblos. Pursuant to the Master Plan for Development and Environmental review based thereon, the Albuquerque Indian School property will be used primarily for office buildings and economic development activities for the 19 Pueblos. The Joint Powers Agreement implemented between the city of Albuquerque and the 19 Pueblos provides generally for city services on the property and clarifies jurisdiction for non-Indians. The jurisdiction of this court shall provide for protection of lives, persons, and property of people working on the property, economic development projects and visitors to the Albuquerque Indian School location until the local Pueblos establish a tribal court of their own.

Both the Albuquerque Indian School and the Santa Fe Indian School properties are held in trust by the Federal Government for the benefit of the 19 Pueblos and a consensus is required to establish a tribal court that will represent all the Pueblos. The 19 Pueblos have not been able to reach a consensus within this initial time frame even though meetings were held with the Pueblos in an attempt to identify a sponsoring Pueblo to assume the lead in establishing a tribal court for the Albuquerque Indian School property. It does not appear likely that in the immediate future the 19 Pueblos will reach this consensus; therefore, it is necessary for the amendment to part 11 that places the Albuquerque Indian School property on the list of CFR Courts, as an addition to the Santa Fe Indian School property, to become a permanent listing. The jurisdiction of this CFR Court will remain the same as that published in the **Federal Register** on July 2, 2002, at 67 FR 44353, for the Santa Fe Indian School property, including the Indian Health Hospital, and now with the addition of the Albuquerque Indian School property. The Pueblos, however, will work in conjunction with the Southwest Regional Office to establish a tribal court to exercise jurisdiction at the Santa Fe Indian School property and the Albuquerque Indian School property at which time the Pueblos may request the Secretary to remove the Santa Fe Indian School and Albuquerque Indian School as a CFR Court.

Judges of the Court of Indian Offenses shall be authorized to exercise all authority provided under 25 CFR part 11, including: Subpart D—Criminal Offenses; Subpart H—Appellate Proceedings; Subpart J—Juvenile Offender Procedure; issuance of arrest and search warrants pursuant to 25 CFR 11.302 and 11.305 and section 4(2)(A) of the Indian Law Enforcement Reform Act, Public Law 101–379, 104 Stat. 473 (August 18, 1990). Officials of the Bureau of Indian Affairs have already set up the permanent Court of Indian Offenses pursuant to 25 CFR 11.100(a) for the Southwest Region to address a similar law enforcement need at the Santa Fe Indian School property. This final rule will not authorize judges to exercise the following authority under 25 CFR part 11: Subpart E—Civil Actions; Subpart F—Domestic Relations; Subpart G—Probate Proceedings; Subpart I—Children's Court; and Subpart K—Minor-in-Need-of-Care Procedure.

The establishment of this court is based upon the need for a code to be established for law enforcement staff operating on the Albuquerque Indian School property.

Determination To Publish a Direct Final Rule Effective Immediately

In accordance with the requirement of the Administrative Procedure Act (5 U.S.C. 553(B)), we have determined that publishing a proposed rule would be impractical because of the potential harm that could result from the lack of a court with jurisdiction over the Albuquerque Indian School property. We are therefore publishing this change as a final rule with request for comments.

The Bureau of Indian Affairs has determined it appropriate to make the rule effective immediately by waiving the requirement of publication 30 days in advance of the effective date found at 5 U.S.C. 553(d). This is because of the critical need to expedite establishment of this court to fill the void in law enforcement at the Albuquerque Indian School property, and the imminent increase in visitors to the grounds in question. It is in the public interest and the interest of the Pueblos not to delay implementation of this amendment. Accordingly, this final rule is effective immediately.

We invite comments on any aspect of this rule and we will revise the rule if comments warrant. Send comments on this rule to the address in the **ADDRESSES** section.

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The establishment of this property to an existing Court of Indian Offenses is estimated to cost less than

$200,000 annually to operate. The cost associated with the operation of this Court will be born by the Bureau of Indian Affairs and the Pueblos.

(b) This rule will not create inconsistencies with other agencies' actions. The Department of the Interior through the Bureau of Indian Affairs has the sole responsibility and authority to establish Courts of Indian Offenses on Indian reservations.

(c) This rule will not materially effect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The establishment of this Court of Indian Offenses will not affect any program rights of the 19 Pueblos. Its primary function will be to administer justice for misdemeanor offenses within the Albuquerque Indian School property. The court's jurisdiction will be limited to criminal offense provided in 25 CFR part 11.

(d) This rule will not raise novel legal or policy issues. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior 25 U.S.C. 2 and 9, and 25 U.S.C. 13, which authorizes appropriations for ''Indian judges.'' The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States* v. *Clapox,* 35 F. 575 (D. Ore. 1888).

Regulatory Flexibility Act

The Department of the Interior, Bureau of Indian Affairs, certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required.

Accordingly, a Small Entity Compliance Guide is not required. The amendment to 25 CFR 11.100(a) will establish the addition of the Albuquerque Indian School at Albuquerque, New Mexico, to the existing Court of Indian Offenses with limited criminal jurisdiction over Indians within a limited geographical area at Albuquerque, New Mexico.

Accordingly, there will be no impact on any small entities in New Mexico.

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 or more. The establishment of this court of Indian Offenses is estimated to cost less than $200,000 annually to operate. The cost associated with the operation of this Court will be born by the Bureau of Indian Affairs.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This Court will administer misdemeanor justice for Indians located within the boundaries of the Albuquerque Indian School property, Albuquerque, New Mexico, and will not have any cost or price impact on any other entities in the geographical region.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises. This Court will administer misdemeanor justice for Indians located within the boundaries of the Albuquerque Indian School, Albuquerque, New Mexico, and will not have an adverse impact on competition, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The establishment of this Court of Indian Offenses will not have jurisdiction to affect any rights of the small governments. Its primary function will be to administer justice for misdemeanor offenses within the Albuquerque Indian School grounds. Its jurisdiction will be limited to criminal offenses provided in 25 CFR part 11.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; *i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings Implication Assessment (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The amendment to 25 CFR 11.100(a) will establish an addition of the Albuquerque Indian School property, Albuquerque, New Mexico, with limited criminal jurisdiction over Indians within a limited geographical area to the existing Santa Fe, New Mexico Court of Indian Offenses. Accordingly, there will be no jurisdictional basis to adversely affect any property interest because the court's jurisdiction is solely personal jurisdiction over Indians.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have significant federalism effects. A federalism assessment is not required. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for ''Indian judges.'' The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States* v. *Clapox,* 35 F. 575 (D. Ore. 1888).

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for ''Indian judges.'' The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States* v. *Clapox,* 35 F. 575 (D. Ore. 1888). Part 11 also requires the establishment of an appeals court; hence the judicial system defined in Executive Order 12988 will not normally be involved in this judicial process.

Paperwork Reduction Act

This regulation does not require an information collection under the Paperwork Reduction Act. The information collection is not covered by an existing OMB approval. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis. No information is being collected as a result of this Court existence on, or its limited criminal misdemeanor jurisdiction over Indians within the exterior boundaries of the Albuquerque Indian School property, Albuquerque, New Mexico.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. The establishment of this Court of Indian Offenses conveys personal jurisdiction over the criminal misdemeanor actions of Indians with the additional inclusion of the exterior boundaries of the Albuquerque Indian School and does not have any impact on the environment.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and determined the federally recognized Indian tribes are not affected by this rule, except for the 19 Pueblos in New Mexico. The Court of Indian Offenses will remain in existence until such time as they establish a tribal court to provide for a law and order code and a judicial system to deal with law and order on the additional trust land at the Albuquerque Indian School in accordance with 25 CFR 11.100(c). The establishment of this court is consistent with the Department's trust responsibility and with the unique government-to-government relationship that exists between the Federal Government and Indian tribes.

List of Subjects in 25 CFR Part 11

Courts, Indians—law, Law enforcement, Penalties.

■ For the reasons set out in the preamble, part 11 of title 25 of the Code of the Federal Regulations is amended as set forth below.

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

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

Authority: R.S. 463; 25 U.S.C. 2. Interpret or apply section 1, 38 Stat. 586; 25 U.S.C. 200, unless otherwise noted.

■ 2. In § 11.100, paragraph (a)(14) is revised to read as follows:

§ 11.100 Listing of Courts of Indian Offenses.

(a) * * *

(14) Santa Fe Indian School Property, including the Santa Fe Indian Health Hospital, and the Albuquerque Indian School Property (land held in trust for the 19 Pueblos of New Mexico).

* * * * *

Dated: August 4, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 04–19113 Filed 8–19–04; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 48 and 602

[TD 9145]

RIN 1545–BD29

Entry of Taxable Fuel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that were published in the **Federal Register** on July 30, 2004 (69 FR 45587), relating to the tax on the entry of taxable fuel into the United States.

DATES: This correction will be effective September 28, 2004.

FOR FURTHER INFORMATION CONTACT: Celia Gabrysh (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this correction are under section 4081 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9145), contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

■ Accordingly, the publication of TD 9145, which was the subject of FR Doc. 04–17449, is corrected as follows:

■ On page 45587, column 2, in the preamble under the caption **DATES** last line of the paragraph, the language ''48.4081–3T(c)(ii) and (iv).'' is corrected to read ''48.4081–3T(c)(2)(ii) and (iv).''

LaNita Van Dyke,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 04–19163 Filed 8–19–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA78

TRICARE; Individual Case Management Program; Program for Persons With Disabilities; Extended Benefits for Disabled Family Members of Active Duty Service Members; Custodial Care

AGENCY: Office of the Secretary, DoD.

ACTION: Final Rule; correction.

SUMMARY: On Wednesday, July 28, 2004, the Department of Defense published a final rule (69 FR 44942). This rule is published to correct the previous version published. The Department is publishing this final rule to implement requirements enacted by Congress in section 701(g) of the National Defense Authorization Act for Fiscal Year 2002 (NDAA–02) which terminates the Individual Case Management Program. This rule also implements section 701(b) of the NDAA–02 which provides additional benefits for certain eligible active duty dependents by amending the TRICARE regulations governing the Program for Persons with Disabilities. The Program for Persons with Disabilities is now called the Extended Care Health Option. Other administrative amendments are included to clarify specific policies that relate to the Extended Care Health Option, custodial care, and to update related definitions.

DATES: This rule is effective September 20, 2004. Provisions that must be implemented by contracts are applicable upon direction of the Director, TRICARE Management Activity, or designee; but in no case earlier than September 20, 2004.

ADDRESSES: TRICARE Management Activity, Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011.

FOR FURTHER INFORMATION CONTACT: Michael Kottyan, Medical Benefits and Reimbursement Systems, TRICARE

Management Activity, telephone (303) 676–3520. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Background

The Individual Case Management Program (ICMP). Under the provisions of section 704(3) of the NDAA–93 [Pub. L. 102–484], 10 U.S.C. 1079(a)(17) was enacted which allowed the DoD to establish the ICMP, also known as the Individual Case Management Program for Persons with Extraordinary Conditions (ICMP–PEC). This allowed a reasonable deviation from the restrictive statutory coverage of health services for patients who had exceptionally serious, long-range, costly and incapacitating conditions. The ICMP was officially implemented in March 1999 as a waiver program that provided coverage for care and services that were normally restricted from coverage under the Basic Program. Specifically, when a beneficiary was determined to meet the TRICARE definition of custodial care, coverage under the Basic Program was limited to one hour of skilled nursing care per day, twelve physician visits per year related to the custodial condition, durable medical equipment and prescription medications. The Department recognized that the exclusion of coverage when a family member is deemed to be a custodial care patient is both a financial and emotional burden. Consequently, the Department used the ICMP/ICMP–PEC authority to cover medically necessary care and to enable TRICARE case managers to maximize available resources for these beneficiaries.

Repeal of the ICMP. Section 701(g) of the NDAA–02 repealed 10 U.S.C. 1079(a)(17), the statutory authority for the ICMP. However, section 701(d) allows the Department to continue to provide payment for home health care or custodial care services not otherwise authorized under the Basic Program as if the ICMP were still in effect. Payment may occur when a determination is made that discontinuation of payment would result in the provision of services inadequate to meet the needs of the eligible beneficiary and would be unjust to the beneficiary. Eligible beneficiaries are defined in section 701(d)(3) as covered beneficiaries who were regarded as custodial care patients under the ICMP/ICMP–PEC and received medically necessary skilled services for which the Secretary provided payment before December 28, 2001. Beneficiaries receiving services under the ICMP and whose level of services, authorized as of December 28, 2001, can be appropriately provided through other TRICARE programs shall be transitioned into such programs upon identification by the Director, TRICARE Management Activity or designee.

Custodial Care. Section 701(c) of the NDAA–02 provides a statutory definition of custodial care that is more consistent with other federal programs. The change also results in the narrowing of the statutory exclusions of custodial care that has the effect of eliminating current program restrictions on paying for certain medically necessary care.

Note: The statutory definition of custodial care under section 701(c) began on December 28, 2001, the effective date of the NDAA–02. Public notice of the substitution of the new statutory definition of the former custodial care definition in 32 CFR 199.2 was published in the **Federal Register** at 67 FR 40597 on June 13, 2002.

Program for Persons with Disabilities (PFPWD). This program is now renamed the Extended Care Health Option (ECHO). The PFPWD was established by Congress in 1966 and was originally called the Program for the Handicapped (PFTH). The name was changed to PFPWD in 1997 to reflect the national shift away from the label of handicapped and in an effort to be more sensitive to our beneficiaries with special needs. The program was established to provide financial assistance for active duty family members who are moderately or severely mentally retarded or have a serious physical disability. The purpose of the program was to help defray the cost of services not available either through the Basic Program or through other public agencies as a result of state residency requirements. Section 701(b) of the NDAA–02 strikes 10 U.S.C. 1079(d), (e), and (f), which were the statutory authority for the PFPWD, and re-authorizes the program with new sub-sections (d), (e), and (f). These new sub-sections add an extraordinary physical or psychological condition as a qualifying condition and limits the requirement to use public facilities to the extent that they are available and adequate to certain benefits under sub-section (e). They also include discretion to increase the monthly government cost-share for allowable services from a maximum of $1,000 per month and expand the benefit to allow for coverage of ECHO home health care and services beyond the Basic program. Section 701(e) also includes the discretion to allow coverage for custodial care and respite care.

II. The Extended Care Health Option (ECHO)

Purpose. The primary purpose of the ECHO is to provide extended benefits to eligible beneficiaries that assist in the reduction of the disabling effects of an ECHO qualifying condition and that are not available through the Basic Program. Under 10 U.S.C. 1079(e), ECHO benefits may be provided only to the extent such service, supply or equipment is not a covered benefit under the Basic Program. This may include comprehensive health care services, including services necessary to maintain, minimize or prevent deterioration of, function of an eligible beneficiary.

Eligibility. Participation in the ECHO is voluntary and is available only for TRICARE-eligible family members of active duty service members who have a qualifying condition. Qualifying conditions are limited under 10 U.S.C. 1079(d)(3)(B) to beneficiaries who have

(a) Moderate or severe mental retardation; or

(b) A serious physical disability, as defined in 32 CFR 199.2; or

(c) An extraordinary physical or psychological condition, as defined in 32 CFR 199.2

ECHO Benefits. ECHO benefits established herein include diagnostic procedures to establish a qualifying condition, inpatient, outpatient, and comprehensive home health care supplies and services, training, habilitative or rehabilitative services, special education, assistive technology devices, institutional care within a State when a residential environment is required, transportation under certain circumstances, certain other services such as assistive services of a qualified interpreter or translator for deaf or blind beneficiaries in conjunction with receipt of other allowed ECHO benefits, equipment adaption and maintenance, and respite care, and ECHO home health care.

ECHO Respite Care. Under 10 U.S.C. 1079(e)(6), the Department may provide respite care under the ECHO program. Respite care is defined in 32 CFR 199.2 as short term care for a patient in order to provide rest and change for those who have been caring for the patient at home, usually the patient's family. DoD recognizes that caring for a special needs beneficiary poses special challenges, especially for active duty families. This rule establishes an ECHO benefit to provide a maximum of 16 hours per month of respite care. The respite care benefit is available for ECHO beneficiaries in any month during which the beneficiary receives

ECHO benefits other than respite care under the ECHO Home Health Care benefit. Respite care services will be provided by a TRICARE-authorized home health agency and will provide health care services for the covered beneficiary, and not baby-sitting or child-care services for other members of the family. The benefit is not cumulative, that is, any respite care hours not used in one-month will not be carried over or banked for a subsequent month(s). The Government's cost-share incurred for the ECHO respite care services accrue to the ECHO maximum monthly benefit of $2,500.

Government Cost-share Liability for ECHO. The Government's monthly cost-share of all benefits provided to a beneficiary in a particular month under the PFPWD was statutorily limited to $1,000 by 10 U.S.C. 1079 (e)(2). The Government's monthly cost-share of any benefits provided under ECHO is now statutorily limited to $2,500 by section 701(b) of the NDAA–02 (10 U.S.C. 1079(f)(2)(A)) for benefits related to training, rehabilitation, special education, assistive technology devices, and institutional care in private, non-profit, public, and state institutions and facilities, and if appropriate, transportation to and from such institutions and facilities. Because the NDAA–02 provided no statutory limitation concerning the amount of the government's monthly cost-share for all other benefits under ECHO, the Department has discretion to determine for the maximum monthly government cost-share. Therefore, this rule increases the monthly Government cost-share from $1,000 to $2,500 for all benefits under ECHO, except for the new ECHO Home Health Care (EHHC) benefit as established herein. The primary reason for this increase is that the maximum government cost-share has not been adjusted since 1980. We will continue to review this issue to insure that the government's cost-share reasonably meets the needs of beneficiaries.

ECHO Home Health Care (EHHC). Under 10 U.S.C. 1079(e), extended benefits may be provided to eligible beneficiaries to the extent such benefits are not provided under provisions of chapter 55, title 10, United States Code, other than under this section. Under 10 U.S.C. 1079(e)(2), the ECHO may include ''comprehensive home health care supplies and services which may include cost effective and medically appropriate services other than part-time or intermittent services (within the meaning of such terms as used in the second sentence of section 1861(m) of the Social Security Act).'' Section 701(a) of the NDAA–02 requires home health care services under the Basic Program be provided in the manner and under the conditions described in section 1861(m) of the Social Security Act. Therefore, this rule establishes an ECHO Home Health Care (EHHC) benefit for qualifying beneficiaries.

EHHC Eligibility. To qualify for EHHC, the beneficiary must meet all general ECHO program eligibility requirements and must

(a) Physically reside within the 50 United States, the District of Columbia, Puerto Rico, the Virgin Islands, or Guam; and

(b) Be homebound, as defined in § 199.2 and as modified in this rule; and

(c) Require medically necessary skilled services that exceed the maximum level of coverage provided under the Basic Program's home health care benefit, and/or

(d) Require frequent interventions, other than skilled medical services, by the primary caregiver(s) (as ''primary caregiver'' is defined in § 199.2) such that EHHC services are necessary to allow primary caregiver(s) the opportunity to rest; and

(e) Be case managed (as ''case management'' is defined in § 199.2), including a periodic assessment of needs, and receive services as outlined in a written plan of care; and

(f) Receive home health care services from a TRICARE-authorized home health agency as described in § 199.6(b)(4)(xv).

EHHC Benefit. Covered TRICARE-authorized home health agency services are the same as, and provided under the same conditions as, those services provided under the TRICARE Basic Program under § 199.4(e)(21), with the exception that the EHHC benefit is not limited to part-time or intermittent home health care. Therefore, this rule sets out that TRICARE beneficiaries who are eligible for the ECHO and require home health care services beyond the coverage limits under the Basic Program will receive all home health care services under EHHC and no portion will be provided under the Basic Program.

EHHC Plan of Care. The level of ECHO home health care services authorized will be based on a written plan of care that supports the medical necessity of those services in excess of what can be authorized by the Basic Program, or, in the case of a beneficiary who requires frequent interventions, the need for EHHC in order to allow the primary caregiver(s) the opportunity to rest. The plan of care must include identification of the professional qualifications or skill level of the person required to provide the care. Reasonable justification for the medical necessity of the level of provider must be included in the plan of care, otherwise, reimbursement will not be authorized for that level of provider.

EHHC Respite Care. This rule establishes respite care within the EHHC benefit specifically tailored for families with a beneficiary who has a medical condition(s) that requires frequent interventions by the primary caregiver. For the purpose of this respite care, the term ''frequent'' means ''more than two interventions during the eight-hour per day period that the primary caregiver would normally be sleeping.'' The service performed during the interventions may have been taught to the primary caregiver by a medical professional, but the services performed by the primary caregiver are such that they can be performed safely and effectively by the average non-medical person without direct supervision of a licensed nurse or other health care provider. Therefore, when an eligible beneficiary's care plan reflects a need for frequent interventions by the primary caregiver, the beneficiary is eligible for EHHC respite care services in lieu of the ECHO respite care benefit. EHHC beneficiaries in this situation are eligible for eight hours per day for five (5) days per week of respite care by a TRICARE-authorized home health agency. The home health agency will provide health care services for the covered beneficiary so that the primary caregiver is relieved of his/her responsibility for providing such care for the duration of that period of respite care in order that the primary caregiver(s) may rest. The TRICARE-authorized home health agency will not provide baby-sitting or child care services for other members of the family. The benefit is not cumulative, that is, respite care hours not used in a given day will not be carried over or banked for use on another occasion. Also, EHHC respite care periods will not be provided consecutively, that is, a respite care period on one day will not be immediately followed by an EHHC respite care period the next day, thus prohibiting a continuous sixteen hour period of respite care. The government's cost-share incurred for these services accrue to the fiscal year maximum ECHO Home Health Care benefit.

Government Cost-share Liability for EHHC. TRICARE-authorized home health agencies who provide services under the Basic Program are reimbursed under § 199.14(h) using the same methods and rates as used under the Medicare home health agency prospective payment system under section 1895 of the Social Security Act

(42 U.S.C. 1385fff) and 42 CFR part 484, subpart E, except for children under age ten and except as otherwise necessary to recognize distinct characteristics of TRICARE beneficiaries and as described in instructions issued by the Director, TRICARE Management Activity. However, the Medicare home health agency prospective payment system is designed to reimburse providers who provide part-time or intermittent services; it is not designed to reimburse providers for services that exceed those limits. Therefore, this rule set outs that the Department will reimburse home health agencies the allowable charges or negotiated rates. The maximum annual fiscal year cap per EHHC-eligible beneficiary for EHHC services is what the highest locally wage-adjusted maximum Medicare Resource Utilization Grouping (RUG–III) category cost to the Department would be if such services were provided in a TRICARE-authorized skilled nursing facility. (See **Federal Register** 67 FR 40597, June 13, 2002, concerning the TRICARE Sub-Acute Care Program; Uniform Skilled Nursing Facility Benefit; Home Health Care Benefit; Adopting Medicare Payment Methods for Skilled Nursing Facilities and Home Health Care Providers.) Because the highest RUG–III category is used to determine the EHHC fiscal year cap, the Department will not attempt to determine what RUG–III category would apply to the beneficiary if such beneficiary were in fact admitted for care into a TRICARE-authorized skilled nursing facility. The fiscal year cap will be recalculated each year following publication of the ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Notice'', or similar, by the Centers for Medicare and Medicaid Services in the **Federal Register**.

The maximum monthly Government cost-share to be paid to the home health agency for ECHO home health care will be the allowable charges or negotiated rates, but in no case will such payment exceed one-twelfth of the fiscal year cap calculated as above.

When EHHC beneficiaries move within the 50 United States, the District of Columbia, Puerto Rico, the Virgin Islands, or Guam, the annual fiscal year cap will be recalculated as above to reflect the correct wage-adjusted maximum RUG–III category cost for the beneficiary's new location and will apply for the remaining portion of that fiscal year.

EHHC Reimbursement. A TRICARE-authorized home health agency must bill for all authorized ECHO home health care services through established TRICARE claims mechanisms. No special billing arrangements will be authorized in coordination with coverage that may be provided by Medicaid (subject to any State Agency billing Agreements), or other federal, state, community or private programs.

For authorized ECHO home health care and respite care, TRICARE will reimburse the allowable charges or negotiated rates.

Beneficiary Cost-share Liability for ECHO, including EHHC. Under 10 U.S.C. 1079(f), members are required to share in the cost of any benefits provided to their dependents under ECHO. ECHO benefits are not subject to a deductible amount. Regardless of the number of ECHO eligible family members, the sponsor's monthly cost-share for allowed ECHO benefits is based upon the rank of the uniformed service member. Under 10 U.S.C. 1079(f)(1)(A), members with a rank of E–1 are required to pay the first $25 incurred per month, and members with a rank of O–10 are required to pay the first $250 incurred per month. This rule sets out the cost-share for members with ranks in-between such that the majority will pay less than $100 per month, with the most senior enlisted member paying less than $50 per month.

Sponsor rank-based cost-sharing (refer to Table 1, 32 CFR 199.5) applies to benefits covered by the ECHO, and these cost-shares do not apply toward the Basis Program's catastrophic cap under 10 U.S.C. 1079(b)(5). Also, the waiver of cost-shares for active duty family members enrolled in TRICARE Prime does not apply to ECHO as the statutory basis for the ECHO program and its cost-shares is separate and distinct from the Basic Program, including TRICARE Prime.

Other Requirements. Other ECHO requirements are as follows:

Registration. See 701(b) of the NDAA–02 (10 U.S.C. 1079(d)(1)) requires registration to receive ECHO benefits. Sponsors of potentially qualifying beneficiaries will seek to register their family member(s) for ECHO benefits through the applicable Managed Care Support Contractor (MCSC). The MCSC will determine eligibility and update the Defense Enrollment Eligibility Reporting System (DEERS) to reflect the beneficiary's ECHO eligibility. No ECHO benefits may be authorized unless the beneficiary is registered in DEERS as ECHO-eligible.

EFMP Enrollment. Each of the Military Services has its own Exceptional Family Member Program (EFMP). Although the EFMPs can interface with the Military Health System, they are actually military personnel programs. The purpose of those programs is to require military personnel offices to evaluate the ability of a military and civilian community to provide appropriate medical and/or educational services to service members' dependents who have special medical or educational needs before the Service re-assigns the member to a new location. Although each Service requires its members who have family members with special needs to enroll in the EFMP, some members do not comply with this requirement. The result is that some members arrive at assignment locations that are unable to accommodate the special medical and/or educational needs of their dependent(s). Dependents of members required to be enrolled in EFMP are similar if not identical to those who qualify for the ECHO program. The Services do not routinely provide EFMP enrollments to TRICARE, therefore, to provide a greater degree of coordination of services for TRICARE beneficiaries, this rule sets out that members will be required to provide evidence they are enrolled in their Services' Exceptional Family Member Program when registering for ECHO benefits. This requirement will enhance the probability that personnel are assigned to locations where there are sufficient qualified individual or institutional providers to provide the ECHO benefit to their dependents.

Use of Public Facilities. For ECHO benefits related to training, rehabilitation, special education, assistive technology devices, and institutional care in private, non-profit, public, and state institutions and facilities, and if appropriate, transportation to and from such institutions and facilities, the statute expressly requires use of public facilities to the extent such facilities are available and adequate as determined under this regulation.

III. Public Comments

We provided a 60-day public comment period following publication of the Proposed Rule in the **Federal Register** at 68 FR 46526 on August 6, 2003. This proposed rule superseded the proposed rule published at 66 FR 39699 on August 1, 2001, regarding the Individual Case Management Program. Two individuals provided several comments, summarized below.

Comment: The first commenter questioned the Department's decision regarding where the ECHO, in particular ECHO Home Health Care and respite care, will be available.

Response: The ECHO will generally be available wherever there are

TRICARE beneficiaries eligible for the ECHO and appropriate TRICARE-authorized providers.

The focus of the ECHO Health Care benefit is to provide ECHO beneficiaries with the same benefit structure as provided by the Basic Program's Home Health Agency Prospective Payment System (HHA–PPS) but without its limitation that the services be provided on a ''part-time or intermittent'' basis. In order to assure the quality of care for TRICARE beneficiaries, the HHA–PPS provides that only Medicare-authorized Home Health Agencies are eligible for designations as TRICARE-authorized providers. Likewise, the Department also elected to utilize those same home health agencies to provide the ECHO respite care. Consequently, ECHO respite care and the ECHO Home Health Care benefits are limited to locations where there are Medicare-authorized home health agencies. Currently that is limited to the 50 United States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

Comment: That commenter also remarked about the cost of transportation to receive ECHO-authorized benefits.

Response: This rule sets out that costs for public and private transportation necessary to receive authorized ECHO benefits will be reimbursed subject to the limits herein.

Comment: The second commenter requested the Department provide the ECHO respite care benefit to multiple TRICARE beneficiaries within group settings, such as a day care center, and prorate the allowable cost among those receiving the respite care.

Response: The Department has identified several issues regarding the comment. First, other than when allowed by specific exceptions to its policies, TRICARE professional outpatient benefits are provided one-on-one, that is, one patient with one provider per episode of care. Consequently, there is no general provision for ''group'' type episodes-of-care or settings.

Second, the regulatory language at 32 CFR 199.2 defines respite care as ''* * * short-term care for a patient in order to provide rest and change for those who have been caring for the patient *at home*, usually the patient's family.'' Although there is no statutory restriction on where respite care services are provided, it is the Department's decision that such care be provided in the beneficiary's primary residence.

Last, as set out in this rule, both the ECHO respite care and the ECHO Home Health Care respite care benefits will be provided by TRICARE-authorized home health agencies. These providers will be reimbursed on the basis of allowable charges or negotiated rates, neither of which provides pro-rated assignment of TRICARE benefits nor pro-rated payments based on multiple TRICARE beneficiaries receiving care in a group setting.

IV. Summary of Regulatory Modifications

The following modifications were made as a result of developing the implementing instructions:

(1) We clarified that TRICARE reimbursement for ECHO home health care and respite care will be the allowable charges or negotiated rates.

V. Regulatory Procedures

Executive Order (EO) 12866

EO 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effort of $100 million or more on the national economy or which would have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. The estimated economic impact of this rule is estimated to be less than $22 million, therefore this rule is not an economically significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA. This rule, although not economically significant under Executive Order 12866, is a significant rule under Executive order 12866 and has been reviewed by the Office of Management and Budget.

Paperwork Reduction Act

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). Existing DoD information systems to include the Defense Enrollment Eligibility Reporting System (DEERS) will be upgraded to reflect ECHO registration.

List of Subjects in 32 CFR Part 199:

Case management, Claims, Custodial care, Health insurance, Individuals with disabilities, Military personnel.

■ For the reasons set out in the preamble, the Department of Defense corrects 32 CFR part 199 as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

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

■ 2. Section 199.5 is amended by revising the heading to read as follows:

§ 199.5 Extended Care Health Option (ECHO)

* * * * *

■ 3. Section 199.2 is corrected in paragraph (b) by revising paragraph (v) of the definition of ''*Double coverage plan*'', and the definitions for ''*Duplicate equipment*'', ''*Durable equipment*'', ''*Extended Care Health Option (ECHO)*'', ''*Extraordinary physical or psychological condition*'', ''*Homebound*'', and ''*Primary caregiver*'', to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Double coverage plane. * * *

(v) Part C of the Individuals with Disabilities Education Act for services and items provided in accordance with Part C of the IDEA that are medically or psychologically necessary in accordance with the Individual Family Service Plan and that are otherwise allowable under the CHAMPUS Basic Program or the Extended Care Health Option (ECHO).

Duplicate equipment. An item of durable equipment or durable medical equipment, as defined in this section that serves the same purpose that is served by an item of durable equipment or durable medical equipment previously cost-shared by TRICARE. For example, various models of stationary oxygen concentrators with no essential functional differences are considered duplicate equipment, whereas stationary and portable oxygen concentrators are not considered duplicates of each other because the latter is intended to provide the user with mobility not afforded by the former. Also, a manual wheelchair and an electric wheelchair, both of which otherwise meet the definition of durable equipment or durable medical equipment, would not be considered duplicates of each other if each is found to provide an appropriate level of mobility. For the purpose of this Part, durable equipment or durable medical equipment that are essential to provide a fail-safe in-home life support system or that replaces in like kind an item of equipment that is not serviceable due to

normal wear, accidental damage, a change in the beneficiary's condition, or has been declared adulterated by the U.S. FDA, or is being or has been recalled by the manufacturer, is not considered duplicate equipment.

Durable equipment. A device or apparatus which does not qualify as durable medical equipment and which is essential to the efficient arrest or reduction of functional loss resulting from, or the disabling effects of a qualifying condition as provided in § 199.5

* * * * *

Extended Care Health Option (ECHO). The TRICARE program of supplemental benefits for qualifying active duty family members as described in § 199.5.

* * * * *

Extraordinary physical or psychological condition. A complex physical or psychological clinical condition of such severity which results in the beneficiary being homebound as defined in this section.

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Homebound. A beneficiary's condition is such that there exists a normal inability to leave home and, consequently, leaving home would require considerable and taxing effort. Any absence of an individual from the home attributable to the need to receive health care treatment, including regular absences for the purpose of participating in therapeutic, psychosocial, or medical treatment or in an adult day-care program certified by a state, or accredited to furnish adult day-care services in the state shall not disqualify an individual from being considered to be confined to his home. Any other absence of an individual from the home shall not disqualify an individual if the absence is infrequent or of relatively short duration. For the purposes of the preceding sentence, any absence for purpose of attending a religious service shall be deemed to be an absence of infrequent or short duration. Also, absences from the home for non-medical purposes, such as an occasional trip to the barber, a walk around the block or a drive, would not necessarily negate the beneficiary's homebound status if the absences are undertaken on an infrequent basis and are of relatively short duration. In addition to the above, absences, whether regular or infrequent, from the beneficiary's primary residence for the purpose of attending an educational program in a public or private school that is licensed and/or certified by a state, shall not negate the beneficiary's homebound status.

* * * * *

Primary caregiver. An individual who renders to a beneficiary services to support the activities of daily living (as defined in § 199.2) and specific services essential to the safe management of the beneficiary's condition.

* * * * *

§ 199.3 [Amended]

■ 4. Section 199.3 is corrected by revising the term ''Program for Persons with Disabilities'' or the acronym ''PFPWD'' to read ''Extended Care Health Option'' or the acronym ''ECHO'' in paragraphs (b)(2)(iii)(A)(*1*), (c)(2)(i)(C), (c)(2)(ii)(B), (c)(2)(iii)(B), (c)(3)(i)(C), (c)(3)(ii)(B), (c)(4)(i)(B), (c)(4)(ii)(B), (c)(4)(iii)(B), (c)(5)(i)(C), (c)(5)(ii)(B), (c)(5)(iii)(B), (c)(5)(iv)(C)(*2*), (c)(6)(ii), (c)(7)(i)(C), (c)(7)(ii)(B), (c)(8)(ii), (c)(9)(i)(B), (c)(9)(ii)(B), and (c)(10)(ii) wherever they appear.

§ 199.4 [Amended]

■ 5. Section 199.4 is corrected by revising paragraphs (g)(59) and (g)(73) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(g) * * *

(59) *Duplicate equipment.* As defined in § 199.2, duplicate equipment is excluded.

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(73) *Economic interest in connection with mental health admissions.* Inpatient mental health services (including both acute care and RTC services) are excluded for care received when a patient is referred to a provider of such services by a physician (or other health care professional with authority to admit) who has an economic interest in the facility to which the patient is referred, unless a waiver is granted. Requests for waiver shall be considered under the same procedure and based on the same criteria as used for obtaining preadmission authorization (or continued stay authorization for emergency admissions), with the only additional requirement being that the economic interest be disclosed as part of the request. The same reconsideration and appeals procedures that apply to day limit waivers shall also apply to decisions regarding requested waivers of the economic interest exclusion. However, a provider may appeal a reconsidered determination that an economic relationship constitutes an economic interest within the scope of the exclusion to the same extent that a provider may appeal determination under § 199.15(i)(3). This exclusion does not apply to services under the Extended Care Health Option (ECHO) in § 199.5 or provided as partial hospital care. If a situation arises where a decision is made to exclude CHAMPUS payment solely on the basis of the provider's economic interest, the normal CHAMPUS appeals process will be available.

* * * * *

■ 6. Section 199.5 is correctly revised to read as follows:

§ 199.5 TRICARE Extended Care Health Option (ECHO).

(a) *General.* (1) The TRICARE ECHO is essentially a supplemental program to the TRICARE Basic Program. It does not provide acute care nor benefits available through the TRICARE Basic Program.

(2) The purpose of the ECHO is to provide an additional financial resource for an integrated set of services and supplies designed to assist in the reduction of the disabling effects of the beneficiary's qualifying condition. Services include those necessary to maintain, minimize or prevent deterioration of function of an ECHO-eligible beneficiary.

(b) *Eligibility.* (1) The following categories of TRICARE/CHAMPUS beneficiaries with a qualifying condition are eligible for ECHO benefits:

(i) A child or spouse (as described in 10 U.S.C. 1072(2)(A), (D), or (I)) of a member of one of the Uniformed Services; or

(ii) An abused dependent as described in § 199.3(b)(2)(iii); or

(iii) A child or spouse (as described in 10 U.S.C. 1072(2)(A), (D), or (I)) of a member of one of the Uniformed Services who dies while on active duty. In such case the child or spouse remain eligible for benefits under the ECHO for a period of three years from the date the active duty sponsor dies; or

(iv) A child or spouse (as described in 10 U.S.C. 1072(2)(A), (D), or (I)) of a deceased member of one of the Uniformed Services, who, at the time of the member's death was receiving benefits under ECHO, and the member at the time of death was eligible for receipt of hostile-fire pay, or died as a result of a disease or injury incurred while eligible for such pay. In such case the child or spouse remain eligible through midnight of the beneficiary's twenty-first birthday.

(2) *Qualifying condition.* The following are qualifying conditions:

(i) *Mental retardation.* A diagnosis of moderate or severe mental retardation made in accordance with the criteria of the current edition of the ''Diagnostic and Statistical Manual of Mental Disorders'' published by the American Psychiatric Association.

(ii) *Serious physical disability.* A serious physical disability as defined in § 199.2.

(iii) *Extraordinary physical or psychological condition.* An extraordinary physical or psychological condition as defined in § 199.2.

(iv) *Infant/toddler.* Beneficiaries under the age of 3 years who are diagnosed with a neuromuscular developmental condition or other condition that is expected to precede a diagnosis of moderate or severe mental retardation or a serious physical disability, shall be deemed to have a qualifying condition for the ECHO. The Director, TRICARE Management Activity or designee shall establish criteria for ECHO eligibility in lieu of the requirements of paragraphs (b)(2)(i), (ii) or (iii) of this section.

(v) *Multiple disabilities.* The cumulative effect of multiple disabilities, as determined by the Director, TRICARE Management Activity or designee shall be used in lieu of the requirements of paragraphs (b)(2)(i), (ii) or (iii) of this section to determine a qualifying condition when the beneficiary has two or more disabilities involving separate body systems.

(3) *Loss of ECHO eligibility.* Eligibility for ECHO benefits ceases as of 12:01 a.m. of the day following the day that:

(i) The sponsor ceases to be an active duty member for any reason other than death; or

(ii) Eligibility based upon the abused dependent provisions of paragraph (b)(1)(ii) of this section expires; or

(iii) Eligibility based upon the deceased sponsor provisions of paragraphs (b)(1)(iii) or (iv) of this section expires; or

(iv) Eligibility based upon a beneficiary's participation in the Transitional Assistance Management Program ends; or

(v) The Director, TRICARE Management Activity or designee determines that the beneficiary no longer has a qualifying condition.

(4) *Continuity of eligibility.* A TRICARE beneficiary who has an outstanding Program for Persons with Disabilities (PFPWD) benefit authorization on the date of implementation of the ECHO program shall continue receiving such services for the duration of that authorization period provided the beneficiary remains eligible for the PFPWD. Upon termination of an existing PFPWD authorization, of if the beneficiary seeks benefits under this section before such termination, the beneficiary shall establish eligibility for the ECHO in accordance with this section.

(c) *ECHO benefit.* Items and services that the Director, TRICARE Management Activity or designee has determined are capable of confirming, arresting, or reducing the severity of the disabling effects of a qualifying condition, includes, but are not limited to:

(1) Diagnostic procedures to establish a qualifying condition or to measure the extent of functional loss resulting from a qualifying condition.

(2) Medical, habilitative, rehabilitative services and supples, durable equipment that is related to the qualifying condition. Benefits may be provided in the beneficiary's home or other environment as appropriate.

(3) Training that teaches the use of assistive technology devices or to acquire skills that are necessary for the management of the qualifying condition. Such training is also authorized for the beneficiary's immediate family. Vocational training, in the beneficiary's home or a facility providing such, is also allowed.

(4) Special education as provided by the Individuals with Disabilities Education Act and defined at 34 CFR 300.26 and that is specifically designed to accommodate the disabling effects of the qualifying condition.

(5) Institutional care within a state, as defined in § 199.2, in private nonprofit, public, and state institutions and facilities, when the severity of the qualifying condition requires protective custody or training in a residential environment. For the purpose of this section protective custody means residential care that is necessary when the severity of the qualifying condition is such that the safety and well-being of the beneficiary or those who come into contact with the beneficiary may be in jeopardy without such care.

(6) Transportation of an ECHO beneficiary, and a medical attendant when necessary to assure the beneficiary's safety, to or from a facility or institution to receive authorized ECHO services or items.

(7) *Respite care.* ECHO beneficiaries are eligible for 16 hours of respite care per month in any month during which the beneficiary otherwise receives an ECHO benefit(s). Respite care is defined in § 199.2. Respite care services will be provided by a TRICARE-authorized home health agency and will be designed to provide health care services for the covered beneficiary, and not baby-sitting or child-care services for other members of the family. The benefit will not be cumulative, that is, any respite care hours not used in one month will not be carried over or banked for use on another occasion.

(i) TRICARE-authorized home health agencies must provide and bill for all authorized ECHO respite care services through established TRICARE claims' mechanisms. No special billing arrangements will be authorized in conjunction with coverage that may be provided by Medicaid or other federal, state, community or private programs.

(ii) For authorized ECHO respite care, TRICARE will reimburse the allowable charges or negotiated rates.

(iii) The Government's cost-share incurred for these services accrue to the maximum monthly benefits of $2,500.

(8) *Other services.* (i) *Assistive services.* Services of qualified personal assistants, such as an interpreter or translator for ECHO beneficiaries who are deaf or mute and readers for ECHO beneficiaries who are blind, when such services are necessary in order for the ECHO beneficiary to receive authorized ECHO benefits.

(ii) *Equipment adaptation.* The allowable equipment purchase shall include such services and modifications to the equipment as necessary to make the equipment useable for a particular ECHO beneficiary.

(iii) *Equipment maintenance.* Reasonable repairs and maintenance of beneficiary owned or rented durable equipment provided by this section shall be allowed while a beneficiary is registered in the ECHO.

(d) *ECHO Exclusions*—(1) *Basic Program.* Benefits allowed under the TRICARE Basic Program will not be provided through the ECHO.

(2) *Inpatient care.* Inpatient acute care for medical or surgical treatment of an acute illness, or of an acute exacerbation of the qualifying condition, is excluded.

(3) *Structural alterations.* Alterations to living space and permanent fixtures attached thereto, including alterations necessary to accommodate installation of equipment or to facilitate entrance or exit, are excluded.

(4) *Homemaker services.* Services that predominantly provide assistance with household chores are excluded.

(5) *Dental care or orthodontic treatment.* Both are excluded.

(6) *Deluxe travel or accommodations.* The difference between the price for travel or accommodations that provide services or features that exceed the requirements of the beneficiary's condition and the price for travel or accommodations without those services or features is excluded.

(7) *Equipment.* Purchase or rental of durable equipment that is otherwise allowed by this section is excluded when:

(i) The beneficiary is a patient in an institution or facility that ordinarily

provides the same type of equipment to its patients at no additional charge in the usual course of providing services; or

(ii) The item is available to the beneficiary from a Uniformed Services Medical Treatment Facility; or

(iii) The item has deluxe, luxury, immaterial or nonessential features that increase the cost to the Department relative to a similar item without those features; or

(iv) The item is duplicate equipment as defined in § 199.2.

(8) *Maintenance agreements.* Maintenance agreements for beneficiary owned or rented equipment are excluded.

(9) *No obligation to pay.* Services or items for which the beneficiary or sponsor has no legal obligation to pay are excluded.

(10) *Public facility or Federal government.* Services or items paid for, or eligible for payment, directly or indirectly by a public facility, as defined in § 199.2, or by the Federal government, other than the Department of Defense, are excluded for training, rehabilitation, special education, assistive technology devices, institutional care in private nonprofit, public, and state institutions and facilities, and if appropriate, transportation to and from such institutions and facilities, except when such services or items are eligible for payment under a state plan for medical assistance under Title XIX of the Social Security Act (Medicaid). Rehabilitation and assistive technology services or supplies may be available under the TRICARE Basic Program.

(11) *Study, grant, or research programs.* Services and items provided as a part of a scientific clinical study, grant, or research program are excluded.

(12) *Unproven status.* Drugs, devices, medical treatments, diagnostic, and therapeutic procedures for which the safety and efficacy have not been established in accordance with § 199.4 are excluded.

(13) *Immediate family or household.* Services or items provided or prescribed by a member of the beneficiary's immediate family, or a person living in the beneficiary's or sponsor's household, are excluded.

(14) *Court or agency ordered care.* Services or items ordered by a court or other government agency, which are not otherwise an allowable ECHO benefit, are excluded.

(15) *Excursions.* Excursions are excluded regardless of whether or not they are part of a program offered by a TRICARE-authorized provider. The transportation benefit available under ECHO is specified elsewhere in this section.

(16) *Drugs and medicines.* Drugs and medicines that do not meet the requirements of § 199.4 or § 199.21 are excluded.

(17) *Therapeutic absences.* Therapeutic absences from an inpatient facility or from home for a homebound beneficiary are excluded.

(18) *Custodial care.* Custodial care, as defined in § 199.2 is not a stand-alone benefit. Services generally rendered as custodial care may be provided only as specifically set out in this section.

(19) *Domiciliary care.* Domiciliary care, as defined in § 199.2, is excluded.

(20) *Respite care.* Respite care for the purpose of covering primary caregiver (as defined in § 199.2) absences due to deployment, employment, seeking of employment or to pursue education is excluded. Authorized respite care covers only the ECHO beneficiary, not siblings or others who may reside in or be visiting in the beneficiary's residence.

(e) *ECHO Home Health Care (EHHC).* The EHHC benefit provides coverage of home health care services and respite care services specified in this section.

(1) *Home health care.* Covered ECHO home health care services are the same as, and provided under the same conditions as those services described in § 199.4(e)(21)(i), except that they are not limited to part-time or intermittent services. Custodial care services, as defined in § 199.2, may be provided to the extent such services are provided in conjunction with authorized ECHO home health care services, including the EHHC respite care benefit specified in this section. Beneficiaries who are authorized EHHC will receive all home health care services under EHHC and no portion will be provided under the Basic Program. TRICARE-authorized home health agencies are not required to use the Outcome and Assessment Information Set (OASIS) to assess beneficiaries who are authorized EHHC.

(2) *Respite care.* EHHC beneficiaries whose plan of care includes frequent interventions by the primary caregiver(s) are eligible for respite care services in lieu of the ECHO general respite care benefit. For the purpose of this section, the term ''frequent'' means ''more than two interventions during the eight-hour period per day that the primary caregiver would normally be sleeping.'' The services performed by the primary caregiver are those that can be performed safely and effectively by the average non-medical person without direct supervision of a health care provider after the primary caregiver has been trained by appropriate medical personnel. EHHC beneficiaries in this situation are eligible for a maximum of eight hours per day, 5 days per week, of respite care by a TRICARE-authorized home health agency. The home health agency will provide the health care interventions or services for the covered beneficiary so that the primary caregiver is relieved of the responsibility to provide such interventions or services for the duration of that period of respite care. The home health agency will not provide baby-sitting or child care services for other members of the family. The benefit is not cumulative, that is, any respite care hours not used in a given day may not be carried over or banked for use on another occasion. Additionally, the eight-hour respite care periods will not be provided consecutively, that is, a respite care period on one calendar day will not be immediately followed by a respite care period the next calendar day. The Government's cost-share incurred for these services accrue to the maximum yearly ECHO Home Health Care benefit.

(3) *EHHC eligibility.* The EHHC is authorized for beneficiaries who meet all applicable ECHO eligibility requirements and who:

(i) Physically reside within the 50 United States, the District of Columbia, Puerto Rico, the Virgin Islands, or Guam; and

(ii) Are homebound, as defined in § 199.2; and

(iii) Require medically necessary skilled services that exceed the level of coverage provided under the Basic Program's home health care benefit; and/or

(iv) Require frequent interventions by the primary caregiver(s) such that respite care services are necessary to allow primary caregiver(s) the opportunity to rest; and

(v) Are case managed to include a reassessment at least every 90 days, and receive services as outlined in a written plan of care; and

(vi) Receive all home health care services from a TRICARE-authorized home health agency, as described in § 199.6(b)(4)(xv), in the beneficiary's primary residence.

(4) *EHHC plan of care.* A written plan of care is required prior to authorizing ECHO home health care. The plan must include the type, frequency, scope and duration of the care to be provided and support the professional level of provider. Reimbursement will not be authorized for a level of provider not identified in the plan of care.

(5) *EHHC exclusions*—(i) *General.* ECHO Home Health Care services and supplies are excluded from those who are being provided continuing coverage

of home health care as participants of the former Individual Case Management Program for Persons with Extraordinary Conditions (ICMP–PEC) or previous case management demonstrations.

(ii) *Respite care.* Respite care for the purpose of covering primary caregiver absences due to deployment, employment, seeking of employment or to pursue education is excluded. Authorized respite care covers only the ECHO beneficiary, not siblings or others who may reside in or be visiting in the beneficiary's residence.

(f) *Cost-share liability*—(1) *No deductible.* ECHO benefits are not subject to a deductible amount.

(2) *Sponsor cost-share liability.* (i) Regardless of the number of family members receiving ECHO benefits or ECHO Home Health Care in a given month, the sponsor's cost-share is according to the following table:

TABLE 1.—MONTHLY COST-SHARE BY MEMBER'S PAY GRADE

E–1 through E–5	$25
E–6	30
E–7 and O–1	35
E–8 and O–2	40
E–9, W–1, W–2 and O–3	45
W–3, W–4 and O–4	50
W–5 and O–5	65
O–6	75
O–7	100
O–8	150
O–9	200
O–10	250

(ii) The Sponsor's cost-share shown in Table 1 in paragraph (f)(2)(i) of this section will be applied to the first allowed ECHO charges in any given month. The Government's share will be paid, up to the maximum amount specified in paragraph (f)(3) of this section, for allowed charges after the sponsor's cost-share has been applied.

(iii) The provisions of § 199.18(d)(1) and (e)(1) regarding elimination of copayments for active duty family members enrolled in TRICARE Prime do not eliminate, reduce, or otherwise affect the sponsor's cost-share shown in Table 1 in paragraph (f)(2)(i) of this section.

(iv) The sponsor's cost-share shown in Table 1 in paragraph (f)(2)(i) of this section does not accrue to the Basic Program's Catastrophic Loss Protection under 10 U.S.C. 1079(b)(5) as shown at §§ 199.4(f)(10) and 199.18(f).

(3) *Government cost-share liability*—(i) *ECHO.* The total Government share of the cost of all ECHO benefits, except ECHO home health care EHHC respite care, provided in a given month to a beneficiary may not exceed $2,500 after application of the allowable payment methodology.

(ii) *ECHO home health care.* (A) The maximum annual fiscal year Government cost-share per EHHC-eligible beneficiary for ECHO home health care, including EHHC respite care may not exceed the local wage-adjusted highest Medicare Resource Utilization Group (RUG–III) category cost for care in a TRICARE-authorized skilled nursing facility.

(B) When a beneficiary moves to a different locality within the 50 United States, the District of Columbia, Puerto Rico, the Virgin Islands, or Guam, the annual fiscal year cap will be recalculated to reflect the maximum established under paragraph (f)(3)(ii)(A) of this section for the beneficiary's new location and will apply to the EHHC benefit for the remaining portion of that fiscal year.

(g) *Benefit payment*—(1) *Transportation.* The allowable amount for transportation of an ECHO beneficiary is limited to the actual cost of the standard published fare plus any standard surcharge made to accommodate any person with a similar disability or to the actual cost of specialized medical transportation when non-specialized transport cannot accommodate the beneficiary's qualifying condition related needs, or when specialized transport is more economical than non-specialized transport. When transport is by private vehicle, the allowable amount is limited to the Federal government employee mileage reimbursement rate in effect on the date the transportation is provided.

(2) *Equipment.* (i) The TRICARE allowable amount for durable equipment shall be calculated in the same manner as durable medical equipment allowable through § 199.4.

(ii) Allocating equipment expense. The ECHO beneficiary (or sponsor or guardian acting on the beneficiary's behalf) may, only at the time of the request for authorization of equipment, specify how the allowable cost of the equipment is to be allocated as an ECHO benefit. The entire allowable cost of the authorized equipment may be allocated in the month of purchase provided the allowable cost does not exceed the ECHO maximum monthly benefit of $2,500 or it may be prorated regardless of the allowable cost. Prorating permits the allowable cost of ECHO-authorized equipment to be allocated such that the amount allocated each month does not exceed the maximum monthly benefit.

(A) *Maximum period.* The maximum number of consecutive months during which the allowable cost may be prorated in the lesser of:

(*1*) The number of months calculated by dividing the allowable cost for the item by 2,500 and then doubling the resulting quotient, rounded off to the nearest whole number; or

(*2*) The number of months of expected useful life of the equipment for the requesting beneficiary, as determined by the Director, TRICARE Management Activity or designee.

(B) *Alternative allocation period.* The allowable equipment cost may be allocated monthly in any amount such that the maximum allowable monthly ECHO benefit of $2,500 or the maximum period under paragraph (g)(2)(ii)(A) of this section, is not exceeded.

(C) *Authorization.* (*1*) The amount allocated each month as determined in accordance with paragraph (g)(2)(ii) of this section will be separately authorized as an ECHO benefit.

(*2*) An item of durable equipment shall not be authorized when such authorization would allow cost-sharing of duplicate equipment, as defined in § 199.2, for the same beneficiary.

(D) *Cost-share.* A cost-share, as provided by paragraph (f)(2) of this section, is required for each month in which a prorated amount is authorized.

(E) *Termination.* The sponsor's monthly cost-share and the prorated equipment expense provisions provided by paragraphs (f) and (g) of this section, shall be terminated as of the first day of the month following the death of a beneficiary or as of the effective date of a beneficiary's loss of ECHO eligibility for any other reason.

(3) *For-profit institutional care provider.* Institutional care provided by a for-profit entry may be allowed only when the care for a specific ECHO beneficiary:

(i) Is contracted for by a public facility as a part of a publicly funded long-term inpatient care program; and

(ii) Is provided based upon the ECHO beneficiary's being eligible for the publicly funded program which has contracted for the care; and

(iii) Is authorized by the public facility as a part of a publicly funded program; and

(iv) Would cause a cost-share liability in the absence of TRICARE eligibility; and

(v) Produces an ECHO beneficiary cost-share liability that does not exceed the maximum charge by the provider to the public facility for the contracted level of care.

(4) *ECHO home health care and EHHC respite care.* (i) TRICARE-authorized home health agencies must provide and bill for all authorized home health care services through established TRICARE claims' mechanisms. No

special billing arrangements will be authorized in conjunction with coverage that may be provided by Medicaid or other federal, state, community or private programs.

(ii) For authorized ECHO home health care and respite care, TRICARE will reimburse the allowable charges or negotiated rates.

(iii) The maximum monthly Government reimbursement for EHHC, including EHHC respite care, will be based on the actual number of hours of EHHC services rendered in the month, but in no case will it exceed one-twelfth of the annual maximum Government cost-share as determined in this section.

(h) *Other Requirements*—(1) *Applicable part.* All provisions of this part, except the provisions of § 199.4 unless otherwise provided by this section or as directed by the Director, TRICARE Management Activity or designee, apply to the ECHO.

(2) *Registration.* Active duty sponsors must register potential ECHO eligible beneficiaries through the Director, TRICARE Management Activity or designee prior to receiving ECHO benefits. The Director, TRICARE Management Activity or designee will determine ECHO eligibility and update the Defense Enrollment Eligibility Reporting System (DEERS) accordingly. Sponsors must provide evidence of enrollment in the Exceptional Family Member Program provided by their branch of Service at the time they register their family member(s) for the ECHO.

(3) *Benefit authorization.* All ECHO benefits require authorization by the Director, TRICARE Management Activity or designee prior to receipt of such benefits.

(i) *Documentation.* The sponsor shall provide such documentation as the Director, TRICARE Management Activity or designee requires as a prerequisite to authorizing ECHO benefits. Such documentation shall describe how the requested benefit will contribute to confirming, arresting, or reducing the disabling effects of the qualifying condition, including maintenance of function or prevention of further deterioration of function, of the beneficiary.

(ii) *Format.* An authorization issued by the Director, TRICARE Management Activity or designee shall specify such description, dates, amounts, requirements, limitations or information as necessary for exact identification of approved benefits and efficient adjudication of resulting claims.

(iii) *Valid period.* An authorization for ECHO benefits shall be valid until such time as the Director, TRICARE Management Activity or designee determines that the authorized services are no longer appropriate or required or the beneficiary is no longer eligible under paragraph (b) of this section.

(iv) *Authorization waiver.* The Director, TRICARE Management Activity or designee may waive the requirement for a written authorization for rendered ECHO benefits that, except for the absence of the written authorization, would be allowable as an ECHO benefit.

(v) *Public facility use.* (A) An ECHO beneficiary residing within a state must demonstrate that a public facility is not available and adequate to meet the needs of their qualifying condition. Such requirement shall apply to beneficiaries who request authorization for training, rehabilitation, special education, assistive technology, and institutional care in private nonprofit, public, and state institutions and facilities, and if appropriate, transportation to and from such institutions and facilities. The maximum Government cost-share for services that require demonstration of public facility non-availability or inadequacy is limited to $2,500 per month per beneficiary. State-administered plans for medical assistance under Title XIX of the Social Security Act (Medicaid) are not considered available and adequate facilities for the purpose of this section.

(B) The domicile of the beneficiary shall be the basis for the determination of public facility availability when the sponsor and beneficiary are separately domiciled due to the sponsor's move to a new permanent duty station or due to legal custody requirements.

(C) Written certification, in accordance with information requirements, formats, and procedures established by the director, TRICARE Management Activity or designee that requested ECHO services or items cannot be obtained from public facilities because the services or items are not available and adequate, is a prerequisite for ECHO benefit payment for training, rehabilitation, special education, assistive technology, and institutional care in private nonprofit, public, and state institutions and facilities, and if appropriate, transportation to and from such institutions and facilities.

(*1*) An administrator or designee of a public facility may make such certification for a beneficiary residing within the service area of that public facility.

(*2*) The Director, TRICARE Management Activity or designee may determine, on a case-by-case basis, that apparent public facility availability or adequacy for a requested type of service or item cannot be substantiated for a specific beneficiary's request for ECHO benefits and therefore is not available.

(*i*) A case-specific determination shall be based upon a written statement by the beneficiary (or sponsor or guardian acting on behalf of the beneficiary) which details the circumstances wherein a specific individual representing a specific public facility refused to provide a public facility use certification, and such other information as the Director, TRICARE Management Activity or designee determines to be material to the determination.

(*ii*) A case-specific determination of public facility availability by the Director, TRICARE Management Activity or designee is conclusive and is not appealable under § 199.10.

(4) Repair or maintenance of beneficiary owned durable equipment is exempt from the public facility use certification requirements.

(5) The requirements of this paragraph (i)(4)(v) notwithstanding, no public facility use certification is required for services and items that are provided under Part C of the Individuals with Disabilities Education Act in accordance with the Individual Family Services Plan and that are otherwise allowable under the ECHO.

(i) *Implementing instructions.* The Director, TRICARE Management Activity or designee shall issue TRICARE policies, instructions, procedures, guidelines, standards, and criteria as may be necessary to implement the intent of this section.

(j) *Implementation transition.* Pending administrative actions necessary for the effective implementation of this section following its publication in the **Federal Register** on August 20, 2004, this section as it existed prior to August 20, 2004, shall remain in effect for a period of not less than 30 days following its publication in the **Federal Register**.

■ 7. Section 199.6 is corrected by revising the heading for paragraph (e) and paragraphs (e)(1)(ii), (e)(2) and (e)(3) to read as follows:

§ 199.6 TRICARE-authorized providers.

* * * * *

(e) *Extended Care Health Option Providers.*

* * * * *

(1) *General.* * * *

(ii) A Program for Persons with Disabilities (PFPWD) provider with TRICARE-authorized status on the effective date for the Extended Care Health Option (ECHO) Program shall be deemed to be a TRICARE-authorized provider until the expiration of all

outstanding PFPWD benefit authorizations for services or items being rendered by the provider.

(2) *ECHO provider categories*—(i) *ECHO inpatient care provider.* A provider of residential institutional care, which is otherwise an ECHO benefit, shall be:

(A) A not-for-profit entity or a public facility; and

(B) Located within a state; and

(C) Be certified as eligible for Medicaid payment in accordance with a state plan for medical assistance under Title XIX of the Social Security Act (Medicaid) as a Medicaid Nursing Facility, or Intermediate Care Facility for the Mentally Retarded, or be a TRICARE-authorized institutional provider as defined in paragraph (b) of this section, or be approved by a state educational agency as a training institution.

(ii) *ECHO outpatient care provider.* A provider of ECHO outpatient, ambulatory, or in-home services shall be:

(A) A TRICARE-authorized provider of services as defined in this section; or

(B) An individual, corporation, foundation, or public entity that predominantly renders services of a type uniquely allowable as an ECHO benefit and not otherwise allowable as a benefit of § 199.4, that meets all applicable licensing or other regulatory requirements of the state, county, municipality, or other political jurisdiction in which the ECHO service is rendered, or in the absence of such licensing or regulatory requirements, as determined by the Director, TRICARE Management Activity or designee.

(iii) *ECHO vendor.* A provider of an allowable ECHO item, such as supplies or equipment, shall be deemed to be a TRICARE-authorized vendor for the provision of the specific item, supply or equipment when the vendor supplies such information as the Director, TRICARE Management Activity or designee determines necessary to adjudicate a specific claim.

(3) *ECHO provider exclusion or suspension.* A provider of ECHO services or items may be excluded or suspended for a pattern of discrimination on the basis of disability. Such exclusion or suspension shall be accomplished according to the provisions of § 199.9.

* * * * *

■ 8. Section 199.7 is corrected by revising paragraph (a)(2) and (b)(2)(xii) to read as follows:

§ 199.7 Claims submission, review, and payment.

(a) *General.* * * *

(2) *Claim required.* No benefit may be extended under the Basic Program or Extended Care Health Option (ECHO) without submission of an appropriate, complete and properly executed claim form.

* * * * *

(b) *Information required to adjudicate a CHAMPUS claim.* * * *

(2) *Patient treatment information.* * * *

(xii) *Other authorized providers.* For items from other authorized providers (such as medical supplies), an explanation as to the medical need must be attached to the appropriate claim form. For purchases of durable equipment under the ECHO it is necessary also to attach a copy of the authorization.

* * * * *

■ 9. Section 199.8 is corrected by revising paragraphs (d)(4) and (d)(5) to read as follows:

§ 199.8 Double coverage.

* * * * *

(d) *Special considerations.* * * *

(4) *Extended Care Health Option (ECHO).* For those services or supplies that require use of public facilities, an ECHO eligible beneficiary (or sponsor or guardian acting on behalf of the beneficiary) does not have the option of waiving the full use of public facilities which are determined by the Director, TRICARE Management Activity or designee to be available and adequate to meet a disability related need for which an ECHO benefit was requested. Benefits eligible for payment under a state plan for medical assistance under Title XIX of the Social Security Act (Medicaid) are never considered to be available in the adjudication of ECHO benefits.

(5) *Primary payer.* The requirements of paragraph (d)(4) of this section notwithstanding, TRICARE is primary payer for services and items that are provided in accordance with the Individualized Family Service Plan as required by Part C of the Individuals with Disabilities Education Act and that are medically or psychologically necessary and otherwise allowable under the TRICARE Basic Program or the Extended Care Health Option.

* * * * *

■ 10. Section 199.20 is corrected by revising paragraph (p)(2)(i) to read as follows:

§ 199.20 Continued Health Care Benefits Program (CHCBP)

* * * * *

(p) *Special program not applicable.* * * *

(2) *Examples.*

(i) The Extended Care Health Option (ECHO) under § 199.5.

* * * * *

■ 11. Appendix A to part 199 is corrected by adding the term ''ECHO'' in alphabetical order to read as follows:

Appendix A to Part 199—Acronyms

* * * * *

ECHO—Extended Care Health Option

* * * * *

Dated: August 10, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–18600 Filed 8–19–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 519

RIN 070–AA40–U

Publication of Rules Affecting the Public; Correction

AGENCY: Department of the Army, DoD.

ACTION: Final rule; correction.

SUMMARY: The Department of the Army is correcting a final rule that appeared in the **Federal Register** of August 6, 2004 (69 FR 47766). The document issued guidance on publication of rules affecting the public in incorporate requirements and policies required by various acts of Congress and Executive Orders. It also incorporates changes to program proponency and policies within the Department of the Army.

DATES: Effective September 7, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Bowen, Army Federal Register Liaison Officer, Alexandria, VA at (703) 428–6422 or Mrs. Brenda Kopitzke, Alternate Army Federal Register Liaison Officer, Alexandria, VA at (703) 428–6437.

SUPPLEMENTARY INFORMATION: In the FR Doc. 04–17998 appearing on page 47766 in the **Federal Register** of Friday, August 6, 2004, the following correction is made:

§ 519.1 [Corrected]

■ On page 47766, in the third column, in § 519.1 the phase ''as implemented by 32 CFR Part 335;'' is corrected to read ''as implemented by 32 CFR Part 336;''

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–19115 Filed 8–19–04; 8:45 am]

BILLING CODE 3710–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–7803–6]

OMB Approvals Under the Paperwork Reduction Act; Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for the Public Water System Supervision Program (PWSS) ICR, OMB Control No. 2040–0090; the Microbial Rules ICR, OMB Control No. 2040–0205; and the Disinfectants/Disinfection Byproducts, Chemical, and Radionuclides (DBP/Chem/Rads) s ICR, OMB Control No 2040–0204. The restructuring by the Environmental Protection Agency's Office of Ground Water and Drinking Water of its existing drinking water program Information Collection Requests (ICR) has resulted in the consolidation of rules and activities into three main drinking water program ICRs.

DATES: This amendment is effective August 20, 2004.

FOR FURTHER INFORMATION CONTACT: Richard Naylor at 202–564–3847.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. The amendment updates the table to list those information collection requirements which have been moved due to the restructure and consolidation of the Office of Ground Water and Drinking Water ICRs. An announcement that the PWSS ICR, OMB Control No. 2040–0090; the Microbial ICR, OMB Control No. 2040–0205; and the DBP/Chem/Rads ICR, OMB Control No. 2040–0204 had been forwarded to the Office of Management and Budget (OMB) for review and approval appeared in the Federal Register on October 5, 2001 (66 FR 51031–51035). In addition, EPA is adding entries for the Public Notification rule and for previous omissions that have not been included in the Part 9 table. The affected regulations are codified at 40 CFR parts 141 and 142. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each Code of Federal Regulations (CFR) volume containing EPA regulations. The table lists CFR citations with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

These ICRs were previously subject to public notice and comment prior to OMB approval. Because the ICRs have already been subject to public notice and comment and because of the ministerial nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), to amend this table without prior notice and comment. For the same reasons, EPA believes that there is ''good cause'' to make this rule effective upon publication under section 553(d)(3) of the APA.

I. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and Tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because 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 rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of August 20, 2004. EPA has submitted reports containing these rules 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: August 13, 2004.

Michael Shapiro,

Acting Assistant Administrator, Office of Water.

■ For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. Amend the Table in § 9.1 as follows:

■ a. Under the heading ''National Primary Drinking Water Regulations'' remove entries ''141.80–141.91'' and ''141.153–141.154'' and add in numerical order entries ''141.31(d)'', ''141.80–141.91'' and ''141.153–141.154''.

■ b. Under the heading ''National Primary Drinking Water Regulations

Implementation'' add in numerical order entries ''142.14(e)–(g)'' and ''142.16(a)''.

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * * * *	
National Primary Drinking Water Regulations	
* * * * * * *	
141.31(d)	2040–0090
* * * * * * *	
141.80–141.91	2040–0204
* * * * * * *	
141.153–141.154	2040–0090
* * * * * * *	
National Primary Drinking Water Regulations Implementation	
* * * * * * *	
142.14(e)–(g)	2040–0090
* * * * * * *	
142.16(a)	2040–0090
* * * * * * *	

[FR Doc. 04–19137 Filed 8–19–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0200; FRL–7673–6]

DCPA; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of DCPA, dimethyl tetrachloroterephthalate, and its metabolites in or on basil, dried leaves; basil, fresh leaves; celeriac; chicory, roots; chicory, tops; chive; coriander, leaves; dill; ginseng; marjoram; parsley, leaves; parsley, dried leaves; radicchio and radish, oriental. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective August 20, 2004. Objections and requests for hearings must be received on or before October 19, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0200. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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. The North American Industrial Classification System

(NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm/*.

II. Background and Statutory Findings

In the **Federal Register** of May 6, 2004 (69 FR 25384) (FRL–7356–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E6442) by Interregional Research Project Number 4 (IR-4), 681 U.S. Highway 1 South, North Brunswick, NJ 08902–3390. That notice included a summary of the petition prepared by IR-4, the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.185 be amended by establishing tolerances for residues of the herbicide DCPA or chlorthal dimethyl, dimethyl tetrachloroterephthalate, in or on oriental radish, basil, coriander, dill, marjoram, chives, ginseng, celeriac, chicory, mradicchio, parsley (fresh) and parsley (dried) at 2.0, 5.0, 5.0, 5.0, 5.0, 5.0, 2.0, 2.0, 5.0, 2.0, 5.0 and 15 parts per million (ppm), respectively. The proposed tolerances were corrected to conform to Food and Feed Commodity Vocabulary database (*http://www.epa.gov/pesticides/foodfeed/*) and to include its metabolites to read as follows: Combined residues of the herbicide DCPA (or chlorthal dimethyl), dimethyl tetrachloroterephthalate, and its metabolites monomethyl tetrachloroterephthalate (MTP) and tetrachloroterephthalate (TPA) (calculated as dimethyl tetrachloroterephthalate) in or on basil, dried leaves at 5.0 ppm, basil, fresh leaves at 20.0 ppm, celeriac at 2.0 ppm, chicory, roots at 2.0 ppm, chicory, tops at 5.0 ppm, chive at 5.0 ppm, coriander, leaves at 5.0 ppm, dill at 5.0 ppm, ginseng at 2.0 ppm, marjoram at 5.0 ppm, parsley, leaves at 5.0 ppm, parsley, dried leaves at 20 ppm, radicchio at 5.0 ppm, and radish, oriental at 2.0 ppm.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for combined residues of DCPA, dimethyl tetrachloroterephthalate, and its metabolites monomethyl tetrachloroterephthalate (MTP) and tetrachloroterephthalate (TPA) (calculated as dimethyl tetrachloroterephthalate) in or on basil, dried leaves at 5.0 ppm, basil, fresh leaves at 20.0 ppm, celeriac at 2.0 ppm, chicory, roots at 2.0 ppm, chicory, tops at 5.0 ppm, chive at 5.0 ppm, coriander, leaves at 5.0 ppm, dill at 5.0 ppm, ginseng at 2.0 ppm, marjoram at 5.0 ppm, parsley, leaves at 5.0 ppm, parsley, dried leaves at 20 ppm, radicchio at 5.0 ppm, and radish, oriental at 2.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by DCPA are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed. Data bearing on the toxicity of tetrachloroterephthalic acid (TPA), a degradate of DCPA, is presented in Table 2.

TABLE 1.—DCPA SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	28–day oral toxicity—rodents (rats)	NOAEL < 215 lowest dose tested (LDT) milligrams/kilogram/day (mg/kg/day) LOAEL = 215 mg/kg/day based on hepatic hypertrophy. At 1,720 mg/kg/day thyroid follicular cell hyperplasia in males
870.3100	90–day oral toxicity—rodents (rats)	NOAEL = 50 mg/kg/day LOAEL = 100 mg/kg/day based on centrilobular hypertrophy. At 1,000 mg/kg/day there were gross and microscopic lesions of lungs and kidneys; microscopic lesions in thyroids; and increased liver weights.

TABLE 1.—DCPA SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3100	13–week oral toxicity—rodents (mice)	NOAEL = 406 mg/kg/day (males) and 1,049 mg/kg/day (females) LOAEL = 1,235 mg/kg/day (males) and 2,198 mg/kg/day (females) based on centrilobular hepatocyte enlargement.
870.3200	21/28–day dermal toxicity	NOAEL ≥ 1,000 mg/kg/day highest dose tested (HDT)
870.3700	Prenatal developmental—rodents (rats)	Maternal NOAEL ≥ 2,000 mg/kg/day (HDT) Developmental NOAEL ≥ 2,000 mg/kg/day (HDT)
870.3700	Prenatal developmental—nonrodents (rabbits)	Maternal NOAEL = 250 mg/kg/day Maternal LOAEL = 500 mg/kg/day based on maternal mortality Developmental NOAEL ≥ 500 mg/kg/day (HDT)
870.3800	Reproduction and fertility effects (rats)	Parental/Systemic NOAEL = 50 mg/kg/day Parental/Systemic LOAEL = 250 mg/kg/day based on body weight decrements, gross and microscopic changes in kidneys and lungs, and microscopic changes in liver and thyroids. Reproductive NOAEL ≥ 1,000 mg/kg/day (HDT) Offspring NOAEL = 50 mg/kg/day Offspring LOAEL = 250 mg/kg/day based on pup body weight decrements during the lactation period.
870.4300	Chronic toxicity and Carcinogenicity—rodents (rats)	NOAEL = 1 mg/kg/day LOAEL = 10 mg/kg/day based on decreased T4 hormone and thyroid and liver histological changes. Increases in thyroid follicular cell adenomas and carcinomas, hepatocellular adenomas and carcinomas, and hepatocholangiomas in females $Q_1^* = 1.5 \times 10^{-3}$ based upon the three combined types of liver tumors in female rats (3/4 scaling factor)
870.4300	Carcinogenicity—mice	NOAEL = 510 mg/kg/day LOAEL = 1,141 mg/kg/day based on elevated liver enzymes and increased liver weight in females. Increases in hepatic adenomas (females) and carcinomas (males, females).
870.5300	Mouse lymphoma assay	Negative for forward mutations
870.5375	Cytogenetic assay in CHO cells	Negative for clastogenicity
870.5550	UDS assay	Negative
870.5915	SCE in CHO cells	Negative
870.7485	Metabolism and pharmacokinetics (rats)	In 6 separate metabolism studies, ^{14}C-DCPA was given as single or multiple oral gavage doses to rats at 1 or 1,000 mg/kg/day. There were no significant sex differences in any of the studies. Absorption was rapid and essentially complete by 48 hours. Absorption was more efficient at 1 mg/kg/day (79%-86% of administered dose) than at 1,000 mg/kg/day (6-9%). Urine was the major route of excretion. Less than 1% of radiolabel was found in bile, so compound in feces represents unabsorbed compound. The major compound found in urine was the mono-methyl metabolite, 4-carbomethoxy-2,3,5,6-tetrachlorobenzoic acid. The di-acid metabolite, TPA, represented approximately 1% of radioactivity in urine. No DCPA was found in urine. Radiolabel did not bioaccumulate in tissues following repeated treatment. Although a high percentage of the administered dose was found in fat 12 hours after discontinuance of dosing (12% of dose in low-dose animals), radiolabel had rapidly depleted by 168 hours (0.03%). Concentration of radiolabel in the thyroid increased at 36 hours postdosing when compared to the 12 hour time period, however, radiolabel in the thyroid rapidly depleted by 168 hours. By 168 hours, highest concentration of radiolabel in both dose groups was in the kidney.
870.7600	Dermal penetration	22% including compound on skin at 47.5 μg/cm^2

TABLE 2.—TPA (TETRACHLOROTEREPHTHALIC ACID) DEGRADATE OF DCPA SUBCHRONIC TOXICITY

Guideline No.	Study Type	Results
N/A	30–day Intubation toxicity—rodents (rats)	NOAEL = 500 mg/kg/day LOAEL = 2,000 mg/kg/day based on soft stools and occult blood in urine.

TABLE 2.—TPA (TETRACHLOROTEREPHTHALIC ACID) DEGRADATE OF DCPA SUBCHRONIC TOXICITY—Continued

Guideline No.	Study Type	Results
870.3100	90–day oral toxicity—rodents (rats)	NOAEL ≥ 500 mg/kg/day (HDT)
870.3700	Prenatal developmental—rodents (rats)	Maternal NOAEL = 1,250 mg/kg/day Maternal LOAEL = 2,500 mg/kg/day based on soft stools and salivation Developmental NOAEL ≥ 2,500 mg/kg/day (HDT)

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

Three other types of safety or uncertainty factors may be used: ''Traditional uncertainty factors;'' the ''special FQPA safety factor;'' and the '' default FQPA safety factor.'' By the term ''traditional uncertainty factor,'' EPA is referring to those additional uncertainty factors used prior to FQPA passage to account for database deficiencies. These traditional uncertainty factors have been incorporated by the FQPA into the additional safety factor for the protection of infants and children. The term ''special FQPA safety factor'' refers to those safety factors that are deemed necessary for the protection of infants and children primarily as a result of the FQPA. The ''default FQPA safety factor'' is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional uncertainty factor or a special FQPA safety factor).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional uncertainty factors deemed appropriate (RfD = NOAEL/UF). Where a special FQPA safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1×10^{-5}), one in a million (1×10^{-6}), or one in ten million (1×10^{-7}). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

A summary of the toxicological endpoints for DCPA used for human risk assessment is shown in Table 3 of this unit:

TABLE 3.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR DCPA FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary	An endpoint of concern attributable to a single dose (exposure) was not identified from the available studies. An acute RfD was not established		
Chronic Dietary (All populations)	NOAEL= 1 mg/kg/day UF = 100 Chronic RfD = 0.01 mg/kg/day	Special FQPA SF = 1X cPAD = chronic RfD/Special FQPA SF = 0.01 mg/kg/day	Combined chronic/carcinogenicity study in rats LOAEL = 10 mg/kg/day based on decreased thyroxine levels and liver and thyroid histological changes in males
Long-Term Dermal (several months to lifetime) (Residential)	Dermal (or oral) study NOAEL= 1 mg/kg/day (dermal absorption rate = 22 % when appropriate)	LOC for MOE = 100 (Residential)	Combined chronic/carcinogenicity study in rats LOAEL = 10 mg/kg/day based on decreased thyroxine levels and liver and thyroid histological changes in males

TABLE 3.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR DCPA FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Short and Intermediate-Term Inhalation (1 day to 6 months) (Residential)	Inhalation (or oral) study NOAEL= 50 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	90–day feeding study in rats LOAEL = 100 mg/kg/day based on based on increased incidence of hepatocellular hypertrophy
Long-Term Inhalation (several months to lifetime) (Residential)	Inhalation (or oral) study NOAEL= 1 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Combined chronic/carcinogenicity study in rats LOAEL = 10 mg/kg/day based on decreased thyroxine levels and liver and thyroid histological changes in males
DCPA Cancer (oral, dermal, inhalation)	Classification: Group C, possible human carcinogen. Q1* = 0.0015 $(mg/kg/day)^{-1}$ based upon three combined types of liver tumors in female rats.		

C. Toxicological Endpoints for TPA

A summary of the toxicological endpoints for TPA used for human risk assessment is shown in Table 4 of this unit:

TABLE 4.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR TPA FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment and UFs	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary	An endpoint of concern attributable to a single dose (exposure) was not identified from the available studies. An acute RfD was not established		
Chronic Dietary (All populations)	NOAEL= 500 mg/kg/day UF = 1,000 Chronic RfD = 0.5 mg/kg/day	Special FQPA SF = 1X cPAD = chronic RfD/Special FQPA SF = 0.5 mg/kg/day	90-day feeding study in rats NOAEL = 500 mg/kg/day (HDT)
Cancer (oral, dermal, inhalation)	TPA is not likely to be a carcinogen for humans because no liver and thyroid precursor events occurred after treatment with TPA at very large doses, and because neither TPA nor DCPA are mutagens.		

D. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.185) for the combined residues of DCPA, dimethyl tetrachloroterephthalate, and its metabolites monomethyl tetrachloroterephthalate (MTP) and tetrachloroterephthalate (TPA) (calculated as dimethyl tetrachloroterephthalate) in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from DCPA and its metabolites tetrachloroterephthalate (MTP) and tetrachloroterephthalate (TPA) (calculated as dimethyl tetrachloroterephthalate) in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure.

An effect of concern attributable to a single exposure (dose) was not identified from the oral toxicity studies including the developmental toxicity studies in rat and rabbits.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA1989–1992 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Anticipated residues for currently registered crops and tolerance level used for the proposed crops and the percent crop treated (PCT) data were used for currently registered crops and 100 % of the crop treated for the proposed uses.

iii. *Cancer.* In conducting this cancer risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA1989–1992 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the cancer risk assessments: Anticipated residues for currently registered crops and tolerance level used for the proposed crops and the percent crop treated (PCT) data were used for currently registered crops and 100 % of the crop treated for the proposed uses.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the

levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information in Table 5 as follows:

TABLE 5.—PERCENT CROP TREATED (PCT) FOR REGISTERED DCPA USES.

Crop	Acreage	PCT	Lbs ai/A[1]	Lbs.a.i
Broccoli	145,000	24	4.6	150,000
Cabbage	78,000	6	5.0	20,000
Cantaloupes	100,000	1	7.7	5,000
Cauliflowers	45,000	15	5.0	30,000
Collards	12,000	20	8.0	20,000
Cucumbers	130,000	1	8.0	1,000
Dry beans	190,000	1	5.0	8,000
Eggplant	5,000	1	6.9	500
Onions	160,000	15	6.7	150,000
Sweet peppers	39,000	5	7.41	15,000
Radishes	21,000	5	7.3	5,000
Summer squash	60,000	1	9.0	1,000
Strawberries	55,000	2	6.4	5,000
Tomatoes	415,000	1	5.0	3,000
Turf	250,000	2	5.4	31,000
Total				444,500

Sources: USDA, EPA 1995–2000.

[1]No reported use of DCPA on cotton. Assume 1% Crop Treated for: Green and dry beans, peach, green and succulent peas, potato, sweet potatoes, honeydew melons, watermelons, winter squash, yams. Assume 100% Crop Treated for: Brussels sprouts, garlic, horseradish, hot pepper, turnips, upland cress.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which

DCPA may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for DCPA and its environmental degradate TPA in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of DCPA and TPA.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water. EECs derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to DCPA they are further discussed in the aggregate risk sections in Unit III.E.

Based on the PRZM/EXAMS and SCI-GROW models, the EECs of DCPA for acute exposures are estimated to be 22 parts per billion (ppb) for surface water and 0.17 ppb for ground water and of TPA for acute exposures are estimated to be 116 parts per billion (ppb) for surface water and 192 ppb for ground water. The EECs for chronic exposures of DCPA are estimated to be 22 ppb for surface water and 0.17 ppb for ground water and of TPA are estimated to be 116 ppb for surface water and 192 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

DCPA is currently registered for use on the following residential non-dietary sites: Garden vegetables and turf. The risk assessment was conducted for exposure to the active ingredient DCPA and manufacturing impurity hexachlorobenzene (HCB) using the following residential exposure assumptions:

1. *Garden vegetables*. Significant post application exposures are not anticipated for garden vegetables because the applications are made to freshly cultivated soil using only the granular products. The risks of acute oral exposures due to granular ingestion by children were not assessed because adverse effects were not seen following a single dose.

2. *Turf*. Significant post application exposures are anticipated for turf because broadcast applications are made to prevent the growth of weeds throughout the lawn. These exposures are anticipated to be short term because only one or two applications are made per growing season and the label recommended application interval is two months or longer. Only incidental oral exposures were assessed for toddlers because a dermal endpoint for short/intermediate term exposures was not selected.

A Turf Transferable Residue (TTR) study involved the application of dacthal W-75 to Kentucky bluegrass turf plots in Ohio. Three of the treated plots were irrigated with 0.5 water immediately following sampling at one hour after treatment and 0.18 of rain occurred at day after treatment (DAT) six. Irrigation reduced the residue from an initial value of 4.2 μg/cm² at DAT 0.04 to 1.6 μg/cm² at DAT 0.08. The residue then dissipated at rate of 6.1 percent per day from DAT 1 until the last day of the study (DAT 14).

The Margins of Exposure (MOEs) calculated for toddler post application turf exposure are presented in Table 6.

TABLE 6.—INCIDENTAL ORAL MOES FOR TODDLER POST APPLICATION TURF EXPOSURE

DAT	Application Rate	Hand to Mouth MOE	Object to Mouth MOE	Soil Ingestion MOE	Aggregate MOE
0	15 lb ai acre	220	890	6,6000	180

The cancer risks for adults exposed to treated and irrigated turf were calculated using standard assumptions and the TTR data averaged over 14 days. The data were normalized to an average application rate of 12.5 lbs ai/acre. It was assumed four days of exposure to turf that was treated within 14 days would occur per year.

The cancer risks calculated for adult post application turf exposure are presented in Table 7.

TABLE 7.—CANCER RISKS FOR ADULT POST APPLICATION TURF EXPOSURE[1]

Turf Transferable Residue Level[2](μg/cm²)	Days Per Year Exposure	DCPA LADD[3] (mg/kg/day)	DCPA Cancer Risk[4]	HCB LADD[3] (mg/kg/day)	HCB Cancer Risk[5]
0.64 (DCPA)	4	2.3e-04	3.4e-07	1.1e-08	1.1e-08

TABLE 7.—CANCER RISKS FOR ADULT POST APPLICATION TURF EXPOSURE[1]—Continued

Turf Transferable Residue Level[2] (μg/cm²)	Days Per Year Exposure	DCPA LADD[3] (mg/kg/day)	DCPA Cancer Risk[4]	HCB LADD[3] (mg/kg/day)	HCB Cancer Risk[5]
0.0026 (HCB)					

[1]Average over 14 days after an application of 12.5 lb ai/acre immediately followed by irrigation.
[2]Assuming heavy yard work with a transfer coefficient (TC) of 7300 cm²/hour.
[3]LADD = TTR x TC x 0.001 mg/μg x DA x 2 hours exposure/day x (1/70 kg) x 4/365 x 50 years /70 years
[4]DCPA Cancer Risk = LADD x Q_1* where Q_1* = 0.0015 mg/kg/day^{-1}for DCPA
[5] HCB Cancer Risk = LADD x Q_1* where Q_1* = 1.0 mg/kg/day^{-1} for HCB

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether DCPA has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to DCPA and any other substances and DCPA does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that DCPA has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. The toxicology database for DCPA is complete for FQPA purposes and there are no residual uncertainties for pre-/post-natal toxicity. Based on the quality of the exposure data, EPA determined that the 10X SF to protect infants and children should be removed. The FQPA factor is removed based on the following:

i. There is no quantitative or qualitative evidence of increased susceptibility of rat and rabbit fetuses to *in utero* exposure to DCPA in developmental toxicity studies. There is no quantitative or qualitative evidence of increased susceptibility to DCPA following pre-/post-natal exposure to a 2–generation reproduction study.

ii. There is no concern for developmental neurotoxicity resulting from exposure to DCPA. A developmental neurotoxicity study (DNT) study is not required.

iii. The toxicological database is complete for FQPA assessment.

iv. The dietary food exposure assessment is based on average field trial values corrected by percent crop treated.

v. The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded.

vi. Submitted turf transferable residue (TTR) data will be used along with the Residential Standard Operating Procedures to assess post-application exposure to children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by DCPA.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against EECs. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the

future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. An effect of concern attributable to a single exposure (dose) was not identified from the oral toxicity studies including the developmental toxicity studies in rat and rabbits. No acute risk is expected from exposure to DCPA.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to DCPA from food will utilize 0.97 % of the cPAD for the U.S. population, 1.1 % of the cPAD for Children (1 - 6 years old). Based on the garden and turf use patterns, chronic residential exposure to residues of DCPA is not expected. In addition, there is potential for chronic dietary exposure to DCPA in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 8 of this unit:

TABLE 8.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO DCPA

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb),	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.01	0.97	22	0.17	350
All Infants	0.01	0.85	22	0.17	99
Children 1- 6	0.01	1.1	22	0.17	99
Females 13 - 50	0.01	0.88	22	0.17	300

Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to TPA from food will utilize 0.02% of the cPAD for the U.S. population, and all infants and children subgroups. Based on the garden and turf use patterns, chronic residential exposure to residues of TPA is not expected. In addition, there is potential for chronic dietary exposure to TPA in drinking water.After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate chronic exposure to TPA to exceed 100% of the cPAD, as shown in Table 9 of this unit:

TABLE 9.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON- CANCER) EXPOSURE TO TPA

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.5	0.02	116	192	17,500
All Infants	0.5	0.02	116	192	5,000
Children 1- 6	0.5	0.02	116	192	5,000
Females 13 - 50	0.5	0.02	116	192	15,000

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

DCPA is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for DCPA.

Short-term DWLOCs were calculated and compared to the EECs for chronic exposure of DCPA in ground and surface water based on chronic food exposure plus the residential handler exposure for adults and the chronic food exposure alone for toddlers. After calculating DWLOCs and comparing them to- the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 10 of this unit:

TABLE 10.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO DCPA

Population Subgroup	Aggregate Exposure (mg/kg/day) (Food + Residential)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. population	0.001697	22	0.17	17,500
All Infants	0.000085	22	0.17	5,000
Children 1- 6	0.00011	22	0.17	5,000
Females 13 - 50	0.001688	22	0.17	15,000

Short term DWLOCs for TPA were calculated based upon food alone because there is no residential non-food exposure to TPA. After calculating DWLOCs and comparing them to- the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 11 of this unit:

TABLE 11.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO TPA

Population Subgroup	Aggregate Exposure (mg/kg/day) (Food + Residential)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. Population	0.000097	116	192	17,500
All Infants	0.000085	116	192	5,000
Children 1- 6	0.00011	116	192	5,000
Females 13 - 50	0.000088	116	192	15,000

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Though residential exposure could occur with the use of DCPA, the endpoints and uncertainty factors for intermediate term exposures are identical to short term. The risks are identical to short term exposure in Table 10. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* DWLOCs were calculated using food alone, and together with residential exposure data. The handler exposure scenario which resulted in the greatest risk (Scenario 1, Hand or Shaker Can Application to Garden Vegetables) was used in the calculation. DWLOC values were calculated and the results are shown in Table 12. The DWLOC for food alone scenario and Food and Home Gardener Handler (Hand Application) scenario are greater than the EEC which means that the cancer risks are expected less than 3.0×10^{-6} for the aggregate exposure to food, water and residential exposure. EPA believes that a risk estimate of this level generally represents a negligible risk, as EPA has traditionally applied that concept. EPA has commonly referred to a negligible risk as one that is in the range of 1 in 1 million (1×10^{-6}). Quantitative cancer risk assessment is not a precise science. There are a significant number of uncertainties in both the toxicology used to derive the cancer potency of a substance and in the data used to measure and calculate exposure. Thus, EPA generally considers numerical estimates as high as 3.0×10^{-6} to be within the range of 1 in 1 million. Therefore, EPA considers the carcinogenic risk from DCPA to be negligible within the meaning of that standard as it has been traditionally applied by EPA.

TABLE 12.—DWLOC CALCULATIONS FOR DCPA (BASED UPON A TARGET CANCER RISK OF 3.0×10^{-6})

	Food Alone	Food and Home Gardener Handler (Hand Application)
Dietary Food Exposure[A]	0.097 µg/kg/day	0.097 µg/kg/day
Residential Exposure[A]	N/A	0.35 µg/kg/day
Aggregate Cancer Exposure	0.097 µg/kg/day	0.45 µg/kg/day
Target Maximum Exposure[B]	2.0 µg/kg/day	2.0 µg/kg/day
Max Water Exposure[C]	1.9 µg/kg/day	1.6 µg/kg/day
Cancer DWLOC[D]	67 µg/Liter	54 µg/Liter
Surface Water EEC - PA Turf @ 15 lb ai/acre (PCA = 0.87)	33 µg/Liter (36–year mean)	
Surface Water EEC - Florida Cabbage @ 10.5 lb ai/acre (PCA = 0.87)	15 µg/Liter (36–year mean)	
Surface Water EEC - California Onions @ 10.5 lb ai/acre (PCA = 0.87)	19 µg/Liter (36–year mean)	
Ground Water EEC - Any Crop @ 10.5 lb ai/acre	0.17 µg/Liter (90–day average)	
Ground Water EEC - Any Crop @ 15 lb ai/acre	0.25 µg/Liter (90–day average)	

[A]The food and residential exposures are expressed in ug/kg/day rather than mg/kg/day.
[B]Target Maximum Exposure (ug/kg/day) = $3.0 \times 10^{-6} / Q_1^* \times 1{,}000$ ug/mg where $Q_1^* = 1.5 \times 10^{-3}$ mg/kg/day
[C]Maximum Water Exposure (ug/kg/day) = [Target Maximum Exposure - (Food Exposure + Residential Exposure)]
[D]Cancer DWLOC(µg/liter) = [maximum water exposure (µg/kg/day) x body weight (kg)] / [water consumption (liter)]

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to residues of DCPA.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example—gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex Maximum Residue Levels (MRLs) for DCPA residues; therefore no compatibility issues exist. There are Canadian MRLs ranging from 1-5 ppm in or on leaf crops, cole crops, cucurbits, legumes, root crops, fruiting vegetables, bulb vegetables and strawberries,. The Canadian MRLs appear to only include the parent compound, but are numerically identical to U.S. tolerances.

V. Conclusion

Therefore, tolerances are established for combined residues of the herbicide DCPA, dimethyl tetrachloroterephthalate, and its metabolites monomethyl tetrachloroterephthalate (MTP) and tetrachloroterephthalate (TPA) (calculated as dimethyl tetrachloroterephthalate) in or on basil, dried leaves at 5.0 ppm, basil, fresh leaves at 20.0 ppm, celeriac at 2.0 ppm, chicory, roots at 2.0 ppm, chicory, tops at 5.0 ppm, chive at 5.0 ppm, coriander, leaves at 5.0 ppm, dill at 5.0 ppm, ginseng at 2.0 ppm, marjoram at 5.0 ppm, parsley, leaves at 5.0 ppm, parsley, dried leaves at 20 ppm, radicchio at 5.0 ppm, and radish, oriental at 2.0 ppm.

In addition, this regulatory action is part of the tolerance reassessment requirements of section 408(q) of the Federal Food, Drug, and Cosmetics Act (FFDCA) 21 U.S.C. 346a(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required to reassess all tolerances in existence on August 2, 1996 by August 2006. This regulatory action will count for 38 reassessments toward the August 2006 deadline.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0200 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 19, 2004.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0200, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of

significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 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 final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 12, 2004.

Lois A. Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.185 is amended to read as follows:

■ i. In paragraph (a), by adding a heading and by alphabetically adding commodities to the table;

■ ii. By redesignating paragraph (b) as paragraph (c) and adding a heading; and

■ iii. By adding and reserving with headings new paragraphs (b) and (d) to read as follows:

§ 180.185 Dimethyl tetrachloroterephthalate; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Basil, dried leaves	5.0
Basil, fresh leaves	20.0
* * * * *	
Celeriac	2.0
Chicory, roots	2.0
Chicory, tops	5.0
Chive	5.0
Coriander, leaves	5.0
* * * * *	
Dill	5.0
* * * * *	
Ginseng	2.0
* * * * *	
Marjoram	5.0
* * * * *	
Parsley, leaves	5.0
Parsley, dried leaves	20.0
* * * * *	
Radicchio	5.0
Radish, oriental	2.0
* * * * *	

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* * * *

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 04–19035 Filed 8–19–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7802–8]

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

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of partial deletion of the Davenport and Flagstaff Smelters Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is publishing a direct final notice of partial deletion of the Davenport and Flagstaff Smelters Superfund Site from the National Priorities List (NPL). Specifically EPA intends to delete 23 residential properties within the Davenport and Flagstaff Smelters Superfund Site located in Salt Lake County, Utah.

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substance Pollution Contingency Plan (NCP). The EPA is publishing this direct final notice of partial deletion with the concurrence of the State of Utah, through the Utah Department of Environmental Quality (UDEQ), because the EPA has determined that all appropriate response actions under CERCLA have been completed at these properties and, therefore, further remedial action pursuant to CERCLA is not appropriate.

This partial deletion pertains only to the 23 properties listed in section IV of this document and does not include any other portion of the Davenport and Flagstaff Smelters Superfund Site. The remainder of the Site will remain on the NPL and response activities will continue.

DATES: This direct final partial deletion will be effective October 19, 2004 unless EPA receives adverse comments by September 20, 2004. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

ADDRESSES: Comments may be mailed to Britta Copt, Community Involvement Coordinator (80CPI), U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6229.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at:

U.S. Environmental Protection Agency Region 8 Records Center, 999 18th St., Suite 300, Denver, CO 80202, Hours: Monday—Friday, 8:30 a.m. to 4:30 p.m.

Sandy Branch, Salt Lake County Library, 10100 S Petunia Way, Sandy, UT 84092, Hours: Monday—Thursday, 10 a.m. to 9 p.m.; Friday—Saturday 10 a.m.—6 p.m.; and

Utah Department of Environmental Quality, 168 North 1950 West, 1st Floor, Salt Lake City, Utah, 84116, (801) 536–4400, Hours: Monday—Friday, 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Stanley Christensen, Remedial Project Manager (8EPR–SR), U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6694.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Partial Site Deletion
V. Partial Deletion Action

I. Introduction

EPA Region 8 is publishing this direct final notice of partial deletion of the Davenport and Flagstaff Smelters Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites or areas within sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication of a notice of intent to partially delete. This action will be effective October 19, 2004 unless EPA receives adverse comments by September 20, 2004 on this notice or the parallel notice of intent to partially delete published in the ''Proposed Rules'' section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final notice of partial deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the partial deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting, or partially deleting, sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the residential properties that EPA intends to delete from the Davenport and Flagstaff Smelters Superfund Site and demonstrates how they meet the partial deletion criteria. Section V discusses EPA's action to partially delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete, or partially delete, a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Section 300.425(e)(1)(i): Responsible parties or other persons have implemented all appropriate response actions required;

ii. Section 300.425(e)(1)(ii): All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response action under CERCLA has been implemented and no further response action by responsible parties is appropriate; or

iii. Section 300.425(e)(1)(iii): The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is partially deleted from the NPL, if hazardous substances, pollutants or contaminants remain in place at the deleted portion of the site above levels that allow for unlimited use and unrestricted exposure, CERCLA Section 121(c), 42 U.S.C. 9621(c), requires that a subsequent review be conducted at least every five years after the initiation of the remedial action at the deleted portion of the site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site (or portion thereof) deleted from the NPL, the deleted area or site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to the partial deletion:

(1) The EPA consulted with the State of Utah on the partial deletion of the Site from the NPL prior to developing this direct final notice of partial deletion.

(2) The State of Utah concurred with the partial deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to partially delete was published today in the ''Proposed Rules'' section of the **Federal Register**, is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to partially delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion of these properties in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of partial deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion or partial deletion of a site from the NPL does not itself create, alter or revoke any individual's rights or obligations. Deletion or partial deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions. Section 300.425 (e)(3) of the NCP governs partial deletion of a site from the NPL in the same manner.

While EPA does not believe that any future response action within the residential properties included in this partial deletion will be needed, if future conditions warrant such action, the deleted areas will remain eligible for future response actions. Furthermore, this partial deletion does not alter the status of the remaining portions of the Davenport and Flagstaff Smelters Superfund Site, which is not proposed for deletion and remains on the NPL.

IV. Basis for Partial Site Deletion

The following information provides EPA's rationale for deleting the portions of the Site referred to above from the NPL.

A. Site Location

The Davenport and Flagstaff Smelters Superfund Site consists of properties located at the mouth of Little Cottonwood Canyon, which is located approximately 15 miles southeast of Salt Lake City, in Salt Lake County, Utah. The Davenport Smelter was located on the southern side of the canyon, near Little Cottonwood Canyon Road. The Flagstaff Smelter was located north of Little Cottonwood Creek. Surrounding these smelter sites are residential properties, which have been grouped into the Residential Operable Unit (ROU) of the Davenport and Flagstaff Smelters Superfund Site. The Site was divided into a Residential Operable Unit and a Non-Residential Operable Unit in order to more efficiently remediate the Site (see section IV B). The real property addresses of the 23 properties to be deleted are:

9767 South Little Cottonwood Place
9516 Glacier Lane
9600 Glacier Lane
3541 N. Little Cottonwood Canyon Road
3742 N. Little Cottonwood Canyon Road
3744 N. Little Cottonwood Canyon Road
3623 Little Cottonwood Lane
3641 Little Cottonwood Lane
3652 Little Cottonwood Lane
3661 Little Cottonwood Lane
3695 Little Cottonwood Lane
3698 Little Cottonwood Lane
3736 Little Cottonwood Lane
3895 Little Cottonwood Lane
9795 Little Cottonwood Lane
9815 Little Cottonwood Lane
9751 Little Cottonwood Lane
9752 Little Cottonwood Lane
9764 Little Cottonwood Lane
9751 Old Ranch Place
9759 Old Ranch Place
9715 Quail Ridge Road
9753 Quail Ridge Road

B. Site History

The Davenport and Flagstaff Smelters Superfund Site includes the remains of three old smelters from the late 1800s. The Davenport Smelter was constructed on the south side of Little Cottonwood Creek as was the McKay Smelter. The Flagstaff Smelter was located less than a quarter mile to the north, near 9500 South Wasatch Boulevard, on the north side of Little Cottonwood Creek.

Airborne particles from the smelter's smokestacks included lead and arsenic used in the smelting process. These contaminants were deposited in soils around the smelters. Slag, which is the waste product from the smelting process, was also left behind. The UDEQ and the Salt Lake County Health Department were alerted when a local gold prospector reported colored soils indicative of early smelting activities.

In 1992, EPA conducted on-site soil analyses and found high levels of lead and arsenic. Based on the results of the 1992 sampling efforts, a Preliminary Assessment (PA) was performed in August 1992. Focused site inspections were performed for the Davenport and Flagstaff Smelters Site in 1994. Additional sampling activities were conducted in June 1994 near the former smelter sites in order to determine the distribution of the soil contamination dispersed away from the source area via air, surface water, or groundwater pathways. It was determined that the possibility of release was likely due to the proximity of surface water, proximity of the groundwater recharge area, and the commonly observed dispersion of windblown dust.

A Site Characterization of the residential areas near the two smelters was performed in 1998. A total of 740 samples were collected from 32 residences near the locations of the two smelters. Surface and subsurface samples were collected in the general area of the former smelter locations in order to provide information regarding the source, nature, and extent of arsenic and lead contamination. Lead and arsenic contamination was found in surface and subsurface soils in the residential areas surrounding both of the smelter sites at concentrations well above risk-based screening levels established by the EPA. EPA proposed the Site for the National Priorities List in January 2000.

There are two operable units at the Site. The Residential Operable Unit (ROU) addresses soil contamination on residential properties in the areas near the locations of the former smelters. About 500 people reside within these areas. The Non-residential Operable Unit (NROU) addresses soil contamination in the undeveloped and non-residential properties surrounding the smelter sites.

The residential properties to be deleted are located within the ROU. The owners of 9767 South Little Cottonwood Place performed a voluntary removal of soil with levels of arsenic and lead above established action levels for the Site. After the removal was complete and documented, the owners received a no further action letter from EPA. The owners of the 22 other properties were issued no further action letters based on

the results of the Site risk assessment and the characterization study.

C. Characterization of Risk

A Baseline Risk Assessment (BLRA) was performed for the Davenport and Flagstaff Smelters Site by the EPA as part of the Site Characterization to determine if risks to human health associated with the contamination identified in previous investigations were sufficient to warrant remediation. The findings of the BLRA indicate that ingestion of arsenic and lead contaminated soils presents the primary health-threatening exposure pathway and presents an unacceptable risk to current and future residents of the Site. Speciation tests were performed on site soils to determine which forms of arsenic and lead were present. Certain types of heavy metal compounds are more available for uptake into the human body. Most of the lead in the contaminated soil appears to be in the form of lead carbonate, lead arsenate and metal bearing iron and manganese oxides. Most of the arsenic in the contaminated soil was found to be in the form of lead arsenate. Lead carbonate and lead arsenate are considered extremely bioavailable for uptake into the human body.

After a thorough review of pertinent data, EPA has identified 10 ug/dL of blood lead as the concentration level at which adverse health effects begin to occur. Furthermore, EPA has set a goal that there should be no more than a 5% chance that a child will have a blood lead concentration above that level. Likewise, the Centers for Disease Control (CDC) has established a guideline of 10 ug/dL of blood lead in preschool children. This is believed to prevent or minimize cognitive deficits associated with lead.

The health effect of chief concern for exposure to arsenic is increased risk of cancer. Because cancer is a chronic disease associated with long-term exposure, the appropriate exposure unit is the area over which a resident is exposed over the course of many years. EPA typically considers risks below one in one million to be so small as to be negligible and risks above 100 in one million to be sufficiently large that some sort of action or intervention is usually needed. Average risk estimates associated with arsenic contaminated soils in the ROU ranged from 2 to 10 in one million, and reasonable maximum exposure (RME) risk estimates range from 20 to 100 in one million. A joint risk management decision was made by UDEQ and EPA to use the level for 100 cancers in one million as the action level for arsenic at the Site.

Ecological risk was not specifically evaluated for the ROU due to the residential setting. In such a setting, risk to residents generally exceeds any ecological risks, and as such, any remediation required to abate human health risk will abate any ecological risks. Ecological risks for the entire site will be evaluated in conjunction with response actions at the NROU.

D. Remedial Investigation and Feasibility Study (RI/FS)

A Site Characterization Report was completed in February 2000 and the Remedial Investigation (RI) was completed in October 2001. These studies were conducted to further characterize contaminated soil at residential properties surrounding the two smelters. The Contaminants of Concern (COCs) identified by UDEQ and EPA for the ROU are arsenic and lead. Other heavy metals are present at elevated levels in site soils; however, the levels of these metals were not considered harmful to human health. Health based clean up goals of 600 mg/kg of lead and 126 mg/kg of arsenic have been established for the Site. Toxicity Characteristic Leaching Procedure (TCLP) analysis was performed to determine hazardous characteristics of contaminated soil. The results of the TCLP analysis indicated high levels of lead and arsenic in the soil, and that the lead in the soil was fairly leachable. It was estimated that 80% of the soil may constitute hazardous waste and require treatment before disposal. It is unlikely that ground water has been impacted by the contamination and steep slopes pose minimal risk of exposure and will not be cleaned up. Twenty properties contain known contamination that requires cleanup.

A Focused Feasibility Study evaluating possible remedies for these properties was completed in December 2001. Three remedial alternatives were selected for evaluation: Alternative 1: No Action; Alternative 2: Excavation and disposal of all contaminated soil (Cost = $11,950,000); Alternative 3: Excavation of contaminated soil under non-native vegetation and soil cover around native vegetation (Cost = $9,717,000).

E. Record of Decision Findings

The selected remedy agreed upon by the EPA and UDEQ for the Residential Operable Unit was Alternative 2, excavation and disposal of all contaminated soil. This decision was made after issuance of the Proposed Plan, which describes the remedial alternatives considered for the Site and the rationale for choosing the selected remedy, and review of the public comments submitted on the Proposed Plan. Soils are to be excavated to a depth of 18 inches for all properties recommended for remediation that have soil-lead levels exceeding 600 mg/kg and arsenic levels exceeding 126 mg/kg. Properties with principle threat wastes, which are contaminants that are either highly toxic or highly mobile, may be excavated to depths greater than 18 inches. Hand excavation will be conducted around affected areas of native vegetation. Excavated soils will be disposed at an appropriate disposal facility. Following excavation, clean backfill and topsoil will be imported. Non-native vegetation that is removed will also be replanted. The interiors of all buildings located on remediated properties will be cleaned to remove dust, and institutional controls will be developed and implemented for any contamination left in place on properties recommended for remediation.

F. Response Actions

Twenty residential properties require soil remediation. Four of the twenty properties, due to highly elevated concentrations of lead and arsenic in soil, are being addressed pursuant to an action memorandum for time critical removals, dated April 22, 2004. The remaining 16 properties will be addressed either pursuant to the April 2004 action memorandum or pursuant to the September 2002 Record of Decision. The cleanup and remediation standards are identical for both response actions.

No waste above action levels was identified on the 23 residential properties proposed for deletion from the Site, with the exception of the 9767 South Little Cottonwood Place property. All soils contamination above action levels was removed from this property, allowing unlimited use and unrestricted exposure. No five-year reviews will be required for these 23 properties since the properties are available for unlimited use and unrestricted exposure.

G. Cleanup Standards

Cleanup standards for the ROU were arrived at through the use of health-based goals. Based on the results of the BLRA, a risk management decision made by the UDEQ and EPA established action levels of 600 mg/kg for lead and 126 mg/kg for arsenic in residential surface soils for properties within the ROU. The 600 mg/kg action level for lead was based on a target such that no child under the age of seven has more than a 5 percent chance of exceeding a

blood lead concentration of 10 micrograms of lead per deciliter of blood. The 126 mg/kg action level for arsenic was derived from a target cancer risk level of 10^{-4}.

H. Community Involvement

The RI and FFS reports and the Proposed Plan for the Davenport and Flagstaff Smelters Superfund Site were made available to the public June 10, 2002. A public comment period was held from June 10, 2002 to August 22, 2002. In addition, a public meeting was held on June 20, 2002 to present the Proposed Plan. A response to the comments received on the Proposed Plan is included in the Responsiveness Summary, which is part of the Record of Decision (ROD).

Public participation activities have been satisfied as required in Sections 113(k), and 117 of CERCLA, 42 U.S.C. 9613(k) and 9617. Documents in the deletion docket, which EPA relied on for recommendation of the partial deletion from the NPL, are available to the public in the information repositories.

V. Partial Deletion Action

The EPA, with concurrence of the State of Utah, has determined that all appropriate responses under CERCLA for the referenced properties have been completed and that no further response actions under CERCLA are necessary. The properties in this partial deletion either did not require remediation or all soil containing identified contaminants was removed. Therefore, EPA is deleting these 23 properties from the NPL.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication. This action will be effective October 19, 2004 unless EPA receives adverse comments by September 20, 2004 on a parallel notice of intent to delete published in the ''Proposed Rules'' section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of partial deletion before the effective date of the deletion and it will not take effect. EPA will simultaneously prepare a response to comments and continue with the partial deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substance, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 28, 2004.

Robert E. Roberts,

Regional Administrator,Region 8.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by revising the entry under Utah for ''Davenport and Flagstaff Smelters'' to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
UT	Davenport and Flagstaff Smelters	Sandy City	P
*	*	*	*

[a] * * *
P = sites with partial deletion(s).

[FR Doc. 04–18966 Filed 8–19–04; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 02–34; FCC 04–147]

Satellite Licensing Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rule revisions to reduce the amount of the bond that satellite licensees are required to file when they are issued their licenses. These rule changes are intended to reduce disincentives against filing satellite license applications proposing new or innovative services.

DATES: Effective September 20, 2004.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418–1539 or via the Internet at *steven.spaeth@fcc.gov.*

SUPPLMENTARY INFORMATION: This summary of the Commission's *First Order on Reconsideration and Fifth Report and Order,* IB Docket No. 02–34, FCC 04–147, adopted June 22, 2004, and released July 7, 2004. The complete text of this *First Order on Reconsideration and Fifth Report and Order* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *http://www.BCPIWEB.com.*

Regulatory Flexibility Analysis: In this *Fifth Report and Order,* the Commission adopts revisions to the current interim bond amounts. Those bond amounts are now $3 million for each GSO satellite and $5 million for each NGSO constellation as the required bond amounts on a going-forward basis. In addition, in this *Fifth Report and Order,* the Commission considered and rejected giving all satellite licensees the option of creating an escrow account rather than posting a bond. The effect of these rule revisions is to reduce the administrative burdens of space station licensees. We expect that this change

will be minimal and positive. Therefore, we certify that the requirements of this Fifth Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Fifth Report and Order,* including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the *Fifth Report and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

Summary of Report and Order: In the *First Report and Order* in IB Docket No. 02–34, 68 FR 51499, August 27, 2003, the Commission adopted several revisions to its satellite licensing procedures, including a requirement that geostationary orbit (GSO) licensees other than mobile satellite service (MSS) licensees file a $5 million bond within 30 days of receiving their licensees. Non-geostationary orbit (NGSO) licensees and GSO MSS licensees were required to file a $7.5 million bond within 30 days of receiving their licensees.

In the *FNPRM* in this proceeding, the Commission invited comment on revising the bond amounts, and on allowing licensees to establish an escrow account as an alternative to the bond requirement. *See* 68 FR 51546, August 27, 2003. Also, several parties filed petitions for reconsideration, requesting elimination of the bond requirement, among other things.

In this *First Order on Reconsideration and Fifth Report and Order,* the Commission reaches the following conclusions: (1) The Commission rejects arguments that it should eliminate the bond requirement; (2) The Commission reduces the required bond amounts to $3 million for each GSO satellite, including GSO MSS satellites, to avoid unreasonably discouraging new or innovative satellite operators from applying for licenses; (3) The Commission also reduces the required bond amounts to $5 million for each NGSO satellite constellation; (4) The Commission does not adopt the escrow account alternative because it does not adequately meet the public policy objectives of the bond requirements; (5) The Commission defers consideration of all the non-bond-related issues in this proceeding to future Order.

Ordering Clauses

Accordingly, *it is ordered,* that pursuant to sections 4(i), 301, 302, 303(r), 308, 309, and 310 of the Communications Act, 47 U.S.C. 154(i), 301, 302, 303(r), 308, 309, 310, and § 1.429 of the Commission's rules, 47 CFR 1.429, the petitions for reconsideration of the *First Report and Order,* in IB Docket No. 02–34, 68 FR 51499, August 27, 2003, *are denied in part and granted in part,* to the extent indicated above, and otherwise deferred to a future Order.

It is further ordered, pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), that this *Fifth Report and Order* in IB Docket No. 02–34 is hereby ADOPTED.

It is further ordered that part 25 of the Commission's rules IS AMENDED as set forth below. These rule revisions will take effect September 20, 2004.

It is further ordered that the Consumer Information Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309, and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 2. Amend § 25.137 by revising paragraph (d) introductory text and paragraph (d)(4) to read as follows:

§ 25.137 Application requirements for earth stations operating with non-U.S. licensed space stations.

* * * * *

(d) Earth station applicants requesting authority to operate with a non-U.S.-licensed space station and non-U.S.-licensed satellite operators filing letters of intent or petitions for declaratory ruling to access the U.S. market must demonstrate that the non-U.S.-licensed space station has complied with all applicable Commission requirements for non-U.S. licensed systems to operate in the United States, including but not limited to the following:

* * * * *

(4) For non-U.S.-licensed satellites that are not in orbit and operating, a bond must be posted. This bond must be in the amount of $5 million for NGSO satellite systems, or $3 million for GSO satellites, denominated in U.S. dollars, and compliant with the terms of § 25.165 of this chapter. The party posting the bond will be permitted to reduce the amount of the bond upon a showing that a milestone has been met, in accordance with the terms of § 25.165(d) of this chapter.

* * * * *

■ 3. Amend § 25.164 by adding paragraph (g), to read as follows:

§ 25.164 Milestones.

* * * * *

(g) Licensees of satellite systems that include both non-geostationary orbit satellites and geostationary orbit satellites, other than DBS and DARS satellite systems, and licensed on or after September 20, 2004 will be required to comply with the schedule set forth in paragraph (a) of this section with respect to the geostationary orbit satellites, and with the schedule set forth in paragraph (b) of this section with respect to the non-geostationary orbit satellites.

■ 4. Amend § 25.165 by revising paragraph (a) and paragraph (d), and by adding paragraph (e) to read as follows:

§ 25.165 Posting of bonds.

(a) For all satellite licenses issued after September 20, 2004, other than DBS licenses, DARS licenses, and replacement satellite licenses as defined in paragraph (e), the licensee is required to post a bond within 30 days of the grant of its license. Failure to post a bond will render the license null and void automatically.

(1) NGSO licensees are required to post a bond in the amount of $5 million.

(2) GSO licensees are required to post a bond in the amount of $3 million.

(3) Licensees of satellite systems including both NGSO satellites and GSO satellites that operate in the same frequency bands as the NGSO satellites are required to post a bond in the amount of $5 million.

* * * * *

(d) A GSO licensee will be permitted to reduce the amount of the bond by $750,000 upon successfully meeting a milestone deadline set forth in section 25.164(a) of this chapter. An NGSO licensee will be permitted to reduce the

amount of the bond by $1 million upon successfully meeting a milestone deadline set forth in section 25.164(b) of this chapter.

(e) A replacement satellite is one that is:

(1) Authorized to be operated at the same orbit location, in the same frequency bands, and with the same coverage area as one of the licensee's existing satellites, and

(2) Scheduled to be launched so that it will be brought into use at approximately the same time as, but no later than, the existing satellite is retired.

[FR Doc. 04–19142 Filed 8–19–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2393; MB Docket No. 04–113, RM–10923; MB Docket No. 04–114, RM–10924, 10925; MB Docket No. 04–116, RM–10927; MB Docket No. 04–118, RM–10929; MB Docket No. 04–119, RM–10930; MB Docket No. 04–120, RM–10931, MB Docket No. 04–121, RM–10932; MB Docket No. 04–122, RM–10933, RM–10934; MB Docket No. 04–123, RM–10935; MB Docket No. 04–125, RM–10940]

Radio Broadcasting Services; Amherst, NY, Berthold, ND, Cordell, OK, Dillsboro, NC, Hubbardston, MI, Laurie, MO, Madras, OR, Weatherford, OK, West Tisbury, MA, Wynnewood, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division grants ten reservation proposals requesting to amend the FM Table of Allotments by reserving certain vacant FM allotments for noncommercial educational use in Amherst, NY, Berthold, ND, Cordell, OK, Dillsboro, NC, Hubbardston, MI, Laurie, MO, Madras, OR, Weatherford, OK, West Tisbury, MA, Wynnewood, OK. *See* 69 FR 26353, published May 12, 2004. At the request of Starboard Media Foundation, Inc., the Audio Division grants a petition requesting to reserve vacant Channel 282A at West Tisbury, Massachusetts for noncommercial educational use. The reference coordinates for Channel *282A at West Tisbury are 41–22–52 North Latitude and 70–40–30 West Longitude. At the request of Living Proof, Inc. and Lansing Community College, the Audio Division grants petitions requesting to reserve vacant Channel 279A at Hubbardston, Michigan for noncommercial educational use. The reference coordinates for Channel *279A at Hubbardston are 43–5–53 North Latitude and 84–51–54 West Longitude. At the request of American Family Association, the Audio Division grants a petition requesting to reserve vacant Channel 265C3 at Laurie, Missouri for noncommercial educational use. The reference coordinates for Channel *265C3 at Laurie are 38–8–30 North Latitude and 92–50–37 West Longitude. *See* **SUPPLEMENTARY INFORMATION**, *infra.*

DATES: Effective September 13, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket Nos. 04–113, 04–114, 04–116, 04–118, 04–119, 04–120, 04–121, 04–122, 04–123, 04–125 adopted July 28, 2004 and released July 30, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

At the request of Starboard Media Foundation, Inc., the Audio Division grants a petition requesting to reserve vacant Channel 237A at Dillsboro, North Carolina for noncommercial educational use. The reference coordinates for Channel *237A at Dillsboro are 35–15–56 North Latitude and 83–9–16 West Longitude. At the request of Starboard Media Foundation, Inc., the Audio Division grants a petition to reserve vacant Channel 264C at Berthold, North Dakota for noncommercial educational use. The reference coordinates for Channel *264C at Berthold are 48–18–54 North Latitude and 101–44–22 West Longitude. At the request of Youngshine Media, Inc., the Audio Division grants a petition requesting to reserve vacant Channel 221A at Amherst, New York for noncommercial educational use. The reference coordinates for Channel *221A at Amherst are 42–58–42 North Latitude and 78–48–0 West Longitude. At the request of Great Plains Christian Radio, Inc., the Audio Division grants a petition requesting to reserve vacant Channel 229A at Cordell, Oklahoma for noncommercial educational use. The reference coordinates for Channel *229A at Cordell are 35–17–24 North Latitude and 98–59–24 West Longitude. At the request of Great Plains Christian Radio, Inc. and University of Oklahoma, the Audio Division grants petitions requesting to reserve vacant Channel 286A at Weatherford, Oklahoma for noncommercial educational use. The reference coordinates for Channel *286A at Weatherford are 35–33–2 North Latitude and 98–43–59 West Longitude. At the request of Sister Sherry Lynn Foundation, Inc., the Audio Division grants a petition requesting to reserve vacant Channel 283A at Wynnewood, Oklahoma for noncommercial educational use. The reference coordinates for Channel *283A at Wynnewood are 34–38–42 North Latitude and 97–10–0 West Longitude. At the request of Radio Bilingue, Inc., the Audio Division grants a petition requesting to reserve vacant Channel 251C1 at Madras, Oregon for noncommercial educational use. The reference coordinates for Channel *251C1 at Madras are 44–50–2 North Latitude and 120–45–55 West Longitude.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by adding Channel *282A and by removing Channel 282A at West Tisbury.

■ 3. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel *279A and by removing Channel 279A at Hubbardston.

■ 4. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Channel *265C3 and by removing Channel 265C3 at Laurie.

■ 5. Section 73.202(b), the Table of FM Allotments under North Carolina, is

amended by adding Channel *237A and by removing Channel 237A at Dillsboro.

■ 6. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Channel *264C and by removing Channel 264C at Berthold.

■ 7. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel *221A and by removing Channel 221A at Amherst.

■ 8. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel *229A and by removing Channel 229A at Cordell; by adding Channel *286A and by removing Channel 286A at Weatherford; by adding Channel *283A and by removing Channel 283A at Wynnewood.

■ 9. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Channel *251C1 and by removing Channel 251C1 at Madras.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–18466 Filed 8–19–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 381

[Docket No. FMCSA–98–4145]

RIN 2126–AA41

Federal Motor Carrier Safety Regulations; Waivers, Exemptions, and Pilot Programs

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) adopts as final its interim regulations at 49 CFR part 381, consistent with section 4007 of the Transportation Equity Act for the 21st Century. The final rule establishes procedures applicants must follow to request waivers and apply for exemptions from the Federal Motor Carrier Safety Regulations and Commercial Driver's License requirements, and procedures to propose and manage pilot programs. In addition, it establishes procedures which govern how FMCSA will review, grant, or deny requests for waivers, applications for exemptions, and proposals for pilot programs. It also establishes requirements for publishing notice of exemption applications or proposals for pilot programs through the **Federal Register** and affording the public an opportunity for comment. As no revisions are necessary, the interim regulations at part 381 are adopted without change.

DATES: Effective September 20, 2004. *Petitions for Reconsideration* must be received by the agency not later than September 20, 2004.

FOR FURTHER INFORMATION CONTACT: Larry W. Minor, Chief, Vehicle and Roadside Operations Division (MC–PSV), Federal Motor CarrierSafety Administration, 400 Seventh Street, SW., Washington,DC 20590. Telephone (202) 366–4009.

SUPPLEMENTARY INFORMATION:

Copies of This Document and Other Related Information

• *Docket:* For access to the public docket, Internet users may access the U.S. DOT Docket Management System (DMS) facility to view or download comments received or background documents, by using the universal resource locator (URL) *http://dms.dot.gov* and typing the last four digits of the docket number of this rulemaking (FMCSA–98–4145); or go to the DMS facility, 400 Seventh Street, SW., (on the Plaza Level), Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday (except Federal holidays).

• You can also get an electronic copy of this document by accessing FMCSA's ''Rules and Regulations'' Web page at *http://www.fmcsa.dot.gov;* or accessing today's **Federal Register** from the Government Printing Office (GPO) Web page at *http://www.gpoaccess.gov.*

Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Small Entity Assistance

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires each agency to respond to small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction.

FMCSA's emphasis on small business assistance extends to all of its headquarters and division offices. Therefore, any small business, organization, or governmental jurisdiction that has a question concerning this document may contact an FMCSA Division office in its State, or an FMCSA ServiceCenter for its geographic area. For addresses and phone number, go to *http://www.fmcsa.dot.gov/aboutus/fieldoffs;* call our toll free number at 1–800–832–5660, or send a FAX to (202) 366–8842.

Background

Discussion of Interim Final Rule

On June 9, 1998, the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107) was enacted. Section 4007 of TEA–21 amended 49 U.S.C. 31315 and 31136(e) concerning authority to grant waivers from the Federal Motor Carrier Safety Regulations (FMCSRs) to a person(s) seeking regulatory relief. Under sections 31315 and 31136(e), FMCSA may grant a waiver or exemption relieving a person from complying in whole or in part with a regulation, if the agency determines it is in the public interest and would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the safety regulation. TEA–21 also permits FMCSA to conduct pilot programs to evaluate alternatives relating to its motor carrier, commercial motor vehicle (CMV), and driver safety regulations. The use of exemptions in pilot programs is administered under strict controls, to enable collection and analysis of data and preparation of a report to Congress. TEA–21 also made a clear distinction between ''waivers'' and ''exemptions'' and specified requirements for pilot programs.

Waivers

TEA–21 authorizes FMCSA to grant short-term waivers for special situations without requesting public comment, and without providing public notice. Waivers require a ''public interest'' finding in addition to a finding of safety. Individual waivers may only be granted to a person for a specific unique, non-emergency event, for a period up to three months.

Exemptions

TEA–21 directs the agency to publish notice of an exemption request in the **Federal Register**, announcing that a request has been filed and justification as to why the exemption is required. We must also afford the public a comment period and an opportunity to inspect the safety analysis and other relevant information. Before granting an exemption, we must publish a notice in

the **Federal Register** and provide the name of the person or class of persons who will receive the exemption, the specific regulations from which person(s) will be exempted and the time period, and all terms and conditions of the exemption. The agency's terms and conditions must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

In addition, the agency must monitor the implementation of each exemption to ensure compliance with its terms and conditions.

Alternatively, if FMCSA denies a request for exemption, we must publish a notice in the **Federal Register** identifying the person who was denied the exemption and the reasons for the denial. TEA–21 permits the option of publishing a notice for each denial of an exemption, or periodically publishing notices of all denials within a given period.

The specific time limitation of an exemption is two years from the date of approval, but may be renewed.

The agency is required to immediately revoke an exemption if—

(1) The person fails to comply with the terms and conditions of the exemption;

(2) The exemption has resulted in a lower level of safety than was maintained before the exemption was granted; or

(3) Continuation of the exemption would not be consistent with the goals and objectives of the regulations issued under the authority of 49 U.S.C. chapter 313, or 49U.S.C. 31136.

Pilot Programs

TEA–21 authorizes the agency to conduct pilot programs to evaluate alternatives to regulations relating to motor carrier, CMV, and driver safety. These programs may include exemptions from one or more regulations. FMCSA must provide detailed information regarding a pilot program through the publication of a notice in the **Federal Register**, including exemptions being considered, and asking for comments before the effective date of the pilot program. We must ensure that safety measures in the pilot programs are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved through compliance with the safety regulations. Each pilot program is limited to three years from the starting date.

If a motor carrier, CMV, or driver fails to comply with the terms and conditions of the pilot program, FMCSA must immediately revoke participation by a carrier, CMV, or driver in the program. Likewise, if continuation of a pilot program is inconsistent with the safety goals and objectives of 49 U.S.C. chapter 313, or 49 U.S.C. 31136, we must immediately terminate that pilot program.

At the conclusion of a pilot program, the agency must report its findings, conclusions, and recommendations to Congress, including suggested amendments to laws and regulations that would enhance motor carrier, CMV, and driver safety and improve compliance with the FMCSRs.

Public Meeting

On August 20, 1998, a public meeting was held at DOT headquarters to discuss various issues related to implementing section 4007 of TEA–21. By **Federal Register** notice, members of the public were notified of the meeting and also invited to submit written comments to the docket(63 FR 40387, July 29, 1998).

Interim Final Rule (IFR)

On December 8, 1998, the agency published an IFR adding Part 381 to the FMCSRs to implement section 4007 of TEA–21(63 FR 67600). The IFR explained procedures that a person must follow when requesting a waiver and applying for an exemption to the FMCSRs. The IFR also described steps to be taken by the agency when it processes requests for waivers and applications for exemptions, and considers proposals for pilot programs. The public was afforded a 60-day comment period.

Comments on IFR and Agency Responses

We received 20 comments on the IFR. The commenters are: Advocates for Highway and Auto Safety (Advocates); American Association of Motor Vehicle Administrators(AAMVA); American Automobile Association (AAA); District of Columbia Metropolitan Police Department (MetropolitanPolice); Georgetown University Law Center, Institute for Public Representation (Georgetown); Insurance Institute for Highway Safety (IIHS); International Brotherhood of Teamsters (IBT); Iowa Department of Transportation (Iowa); J. B. Hunt Transport, Inc. (J.B. Hunt); MassachusettsDepartment of State Police (Massachusetts); MichiganDepartment of State (Michigan); New Jersey Department of Transportation, Division of Motor Vehicles (New Jersey); NewYork State Department of Motor Vehicles (New York DMV); NewYork State Department of Transportation (New York DOT); OhioDepartment of Public Safety (Ohio); Owner-OperatorIndependent Drivers Association, Inc. (OOIDA); West VirginiaDepartment of Transportation, Division of Motor Vehicles(West Virginia); U.S. Equal Employment OpportunityCommission (EEOC); Vermont Agency of Transportation,Department of Motor Vehicles (Vermont); and, the WisconsinDepartment of Transportation (Wisconsin).

The commenters were generally favorable to having regulations in the FMCSRs that concern waivers and exemptions, and pilot programs within FMCSA. However, most commenters had concerns about particular aspects of the IFR. We will discuss the comments by subject matter, followed by FMCSA's response.

Implementation of Section 4007 of TEA–21 by IFR

Advocates argue the IFR was procedurally inadequate. They disagree with the agency's assertions that it was impracticable to publish a Notice of Proposed Rulemaking(NPRM), review the public comments, and issue a final rule prior to the statutory deadline. In essence, Advocates disagrees with the agency's reliance on the practice and procedure elements of the IFR as justification for its immediate adoption.

FMCSA Response: We believe that the agency demonstrated compelling reasons, and exercised an appropriate use of authority under the AdministrativeProcedure Act (APA), 5 U.S.C. 553(b), in promulgating 49 CFRPart 381. The APA permits an agency to waive the normal notice and comment requirements if the agency finds, for good cause, that it would be impracticable, unnecessary, or contrary to the public interest. Section 4007 of TEA–21 required the agency to implement regulations regarding the procedures for requesting an exemption, not later than 180 days after the date of TEA–21's enactment on June 9, 1998. Therefore, the agency determined it was impracticable to publish a NPRM, review the comments received, and publish a final rule by the statutory deadline (December 9, 1998).

Although an NPRM could have been published within the 180-day period, the agency believed it was unrealistic to assume that the rulemaking could have been completed by the statutory deadline, regardless of the number and nature of the comments. The solicitation of information through the public meeting held on August 20, 1998 was an appropriate alternative to issuing a NPRM, given the statutory deadline and

the administrative nature of the rulemaking. We considered remarks by meeting participants and written comments to the docket. Therefore, considering the statutory deadline, FMCSA did provide the public a 60-day comment period in which to offer comments and suggestions on how the procedural rules should be developed to implement section 4007 of TEA–21.

Consistent with section 4007 of TEA–21, the IFR established requirements for receiving and processing waivers and exemptions, and initiating and managing pilot programs. FMCSA believes the requirements are administrative in nature and only reflect agency practice and procedure, because the IFR did not establish pass-fail criteria such as crash rates, safety ratings, compliance review results, or driving records for persons requesting waivers or applying for exemptions. For these reasons, we believe there was good cause to waive notice and comment through a NPRM.

Furthermore, FMCSA stands by a previous determination that there was good cause under 5 U.S.C. 553(d)(3) to make the IFR immediately effective upon publication. Since the IFR was published prior to the statutory deadline, delaying the effective date would have been inconsistent with implementing the statute by the deadline, or as soon as possible thereafter.

Hours of Service Rules

IBT argues that FMCSA does not have statutory authority.to grant waivers and exemptions from the hours of service rules under 49 U.S.C. 31502 (Requirements for Qualifications, Hours of Service, Safety, and EquipmentStandards). IBT believes that authority to issue waivers and exemptions and initiate pilot programs under 49 U.S.C. Chapter 313 (CMV Operators) or 49 U.S.C. 31136 is limited.

FMCSA Response: Although the hours-of-service (HOS) regulations in 49 CFR part 395 were originally promulgated under § 204 of the Motor Carrier Act of 1935 (MCA) (now codified, in relevant part, at 49 U.S.C. 31502), these regulations were reissued by law under the Motor Carrier Safety Act of 1984 (MCSA) (now codified at 49 U.S.C. 31136). The HOS rules are therefore eligible for waivers and exemptions.

Section 206(a) of the MCSA required DOT to issue regulations ensuring, among other things, that ''(2) the responsibilities imposed upon operators of CMVs do not impair their ability to operate such vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate such vehicles safely; and (4) the operation of CMVs does not have deleterious effects on the physical condition of such operators'' (codified, in slightly revised terms, at 49 U.S.C. 31136(A)(2)–(4)). These provisions authorize the agency to adopt HOS regulations to prevent excess on-duty and driving time from degrading drivers'' ability to operate large vehicles safely.

Although DOT was generally required to complete all necessary rulemaking within 18 months after MCSA's date of enactment, § 206(e) as recodified in 1994, provides that ''[i]f the Secretary does not issue regulations on CMV safety under this section, regulations on CMV safety prescribed by the Secretary before October 30, 1984, and in effect on October 30, 1984, shall be deemed in this subchapter to be regulations prescribed by the Secretary under this section'' (49 U.S.C. 31136(d)).

When the FHWA, FMCSA's predecessor agency, prepared to implement § 206 of MCSA, it decided that significant changes to the HOS rules were not then required. FHWA published a final rule on May 19, 1988 (53 FR 18042) making only minor revisions to 49 CFR part 395. Because that rule was issued considerably after the 18-month deadline in section 206(e), the existing HOS rules, as amended by the May 19 rule, were and are deemed—by law pursuant to 49 U.S.C. 31136(d)—to be issued under 49 U.S.C. 31136. Recognizing this fact, the May 19 rule amended the authority citation for Part 395 to refer to the MCSA (then codified as 49 U.S.C. App. 2505,'' now as 49 U.S.C. 31136) as well as the MCA (then ''49 U.S.C.3102,'' now 49 U.S.C. 31502).

Therefore, IBT's argument is incorrect. Because 49 U.S.C. 31315 allows waivers or exemptions of rules issued under 49 U.S.C. 31136 (or 49 U.S.C. chapter 313) and the HOS rules are issued under section 31136, FMCSA has statutory authority to grant waivers and exemptions from the HOS rules.

Regulations Ineligible for Waiver and Exemption

Many commenters identified regulations for which waivers and exemptions should not be considered. For example, Advocates requests that Parts 383 (CDL Standards), 391 (Qualifications of Drivers), 392 (Driving of CMVs), 393(Parts and Accessories Necessary For Safe Operation), 395 (Hours of Service of Drivers), 396 (Inspection, Repair, And Maintenance), and 399 (Step, Handhold, and Deck Requirements for CMVs) be removed from the list. Additionally, Advocates believes that § 390.19 (Motor carrier identification report) and § 390.21 (Marking of CMVs) should be removed as well.

OOIDA, AAMVA, Illinois, Michigan, and Ohio oppose exemptions, waivers, and pilot programs concerning Part 382 (Controlled Substances and Alcohol Use and Testing). Alternatively, OOIDA believes the agency should exclude only those sections of part 382 that provide privacy and protection for drivers required to participate in controlled substances and alcohol testing.

Illinois and Michigan oppose waivers, exemptions, or pilot programs concerning part 391 (Qualifications of Drivers). IIHS opposes inclusion of the hours-of-service rules, and West Virginia is opposed to precluding the requirements of § 390.21.

FMCSA Response

FMCSA recognizes the commenters' safety concerns. However, there is no apparent safety-related reason to change the list of regulations for which waivers and exemptions may be granted. The list of regulations in §§ 381.200, 381.300, and 381.400 is an indication that the agency will accept requests for waivers and exemptions and should not be construed as an indicator that the agency will grant waivers or exemptions which fail to satisfy the statutory requirements of TEA–21. FMCSA will review each request and waiver to ensure, to the greatest extent practicable, that they satisfy the statutory requirements. FMCSA believes it would be inappropriate to exclude safety regulations issued pursuant to 49 U.S.C. Chapter 313 and 31136 from consideration under 49 CFR Part 381. FMCSA believes doing so would suggest the agency had predetermined that it is unlikely a person could develop an alternative means of achieving the safety outcomes provided by full compliance with specific regulations. Innovation is possible, and the regulations concerning waivers, exemptions, and pilot programs should not be so limited as to preclude consideration of alternative approaches to achieving or even improving motor carrier safety.

Section 4007 of TEA–21 requires that the terms and conditions for all waivers and exemptions achieve a level of safety equivalent to or greater than what would be achieved by complying with the safety regulations. To satisfy this statutory test, persons requesting waivers or applying for exemptions must present a credible alternative to the regulation and explain how that alternative would achieve an equivalent or greater level of safety. If the request or exemption were effectively less

stringent than the applicable regulation, it would be difficult to demonstrate compliance with the statutory test. If there is insufficient information or data for FMCSA to conclude that the waiver or exemption would satisfy the statutory test, the agency must not grant the waiver or exemption.

We continue to exclude the accident register requirements (§ 390.15) from the list of regulations eligible for a waiver or exemption. The agency believes it has a responsibility to monitor the crash involvement of entities operating under the terms of a waiver.

We continue to retain the Motor Carrier Identification Report (Form MCS–150) requirement under § 390.19 as one of the regulations that could be waived. The agency believes using that report to gather information on entities that have not previously operated CMVs in interstate commerce, and do not intend to do so after the waiver period expires, is of no apparent benefit. Information from Form MCS–150 will be used to create a file in the Motor Carrier Management Information System (MCMIS), a database containing safety information on interstate motor carrier compliance reviews and roadside inspection results, and CMV crashes. Entities benefiting from this action could be certain intrastate motor carriers that are not subject to State requirements to complete the MCS–150 form, and businesses or groups that rarely (except for unique, non-emergency events) operate CMVs.

Several States now require their intrastate motor carriers to complete Form MCS–150 and to obtain a USDOT identification number. These motor carriers are listed in MCMIS as intrastate-only carriers. The addition of these motor carriers to MCMIS enables States and the FMCSA to work together in determining the number of active motor carriers operating in the U.S., and to monitor their safety performance. The intrastate motor carriers subject to State requirements for completing Form MCS–150 should already have completed a Form MCS–150 prior to applying for a waiver to conduct a short-term operation in interstate commerce. At the end of the waiver period, the intrastate motor carriers would continue to be subject to State requirements. Further, since the agency will be able to identify these entities from information submitted as part of the waiver application, the submission of Form MCS–150 would be redundant.

As for exemptions, FMCSA requires intrastate motor carriers and non-motor carrier entities to complete Form MCS–150 and, under § 390.21, to mark all CMVs. We believe an entity that chooses to operate a CMV in interstate commerce for more than 3 months should be treated as an interstate motor carrier for purposes of MCMIS. Since exemptions provide regulatory relief for up to two years, and may be renewed, it is important that all CMVs operating in interstate commerce under the terms of the exemption be marked.

For exemptions granted as part of a pilot program, FMCSA uses the same list of regulations provided in § 381.300, What is an exemption? We use the same list because there is no apparent reason that participants in a pilot program for up to three years should be treated differently from interstate motor carriers required to complete Form MCS–150 and to mark their CMVs.

Define the Term ''Equivalent''

West Virginia believes the agency needs to define ''equivalent.'' As West Virginia stated:

> When we discuss safety issues on the nation's highways, government, industry, and any associated party should have an established baseline for which the discussion is to be based upon in order to make fair comparisons. The establishing of any such baseline or definition of equivalent terms can be developed in the rulemaking process. This baseline or definition of equivalent should be one that can be uniformly applied in most if not all safety regulations.

EEOC believes the legislative history suggests the term ''equivalent'' is intended to ''describe a reasonable expectation that safety not be compromised.'' EEOC urged the agency to adopt a regulatory definition that reflects congressional intent.

Advocates disagrees with the agency's use of language in the IFR preamble to describe the ''equivalent or greater safety'' standard. Advocates argues the agency is precluded from granting waivers and exemptions, and conducting pilot programs on the basis of an unspecified, free-floating or ad hoc characterization of equivalent or greater safety.

FMCSA Response: We do not believe it is necessary to include a definition of ''equivalent'' in order to effectively implement section 4007 of TEA–21. Moreover, we agree withEEOC that the legislative history suggests the term ''equivalent'' is intended to describe a reasonable expectation that safety not be compromised. However, we do not believe that persons who intend to request waivers, apply for exemptions, or propose pilot programs need a regulatory definition to understand that the agency will not grant any of the above if there is reason to believe that safety will be compromised. A definition of ''equivalent'' would not serve as a substitute for an analysis of the potential safety impacts of a given request for a waiver, application for an exemption, or proposal for a pilot program. Furthermore, FMCSA believes that adopting a definition for ''equivalent'' would not increase the likelihood there will be agreement among the agency, persons seeking waivers, exemptions, or pilot programs, or interested parties as to whether the terms and conditions of a request would compromise safety. The agency is solely responsible for making the final determination based on all available information.

The interim regulations have been in effect for five years. During that time, the agency has effectively applied the standard for a reasonable expectation that waivers, exemptions, and pilot programs would not compromise safety. FMCSA believes a regulatory definition of the term ''equivalent'' would not provide a quantitative standard which could be used to assess all waivers, exemptions, or pilot programs. FMCSA continues to adhere to congressional intent that there is a reasonable expectation that safety would not be compromised.

Role of States

Most of the State agencies and AAMVA expressed concern about the role of the States in the waiver and exemption process. As AAMVA stated:

> Of most concern to the motor vehicle and law enforcement community is receiving ample notification of a proposed waiver or exemption prior to approval. It is critical to have advance notice, preferably not less than 90 days, to allow affected agencies at the State level to share information with their traffic stop or inspection officials. Michigan is concerned that the Federal rule preempts any State laws which may conflict with the waiver or exemption granted by FMCSA. Michigan believes Federal rules undercut State authority and ability to enforce its own requirements, which may be stricter than the Federal mandates. Michigan also believes it is unrealistic to expect the States will be able to ''disengage'' their existing regulations whenever an exception or waiver is granted.

Michigan believes the FMCSA system of notification, as described in the IFR preamble, would not ensure that all interested parties, particularly licensing, registering, and enforcing States, are kept informed and have opportunity to comment on the applicant's safety performance and specific exemption being sought. Michigan argues States need to know details about when, why, and how waivers, exemptions, and pilot programs prior to being implemented.

West Virginia emphasized the importance of communication between FMCSA and the States. West Virginia

believes open and timely communication provides an opportunity for ''fair and adequate consideration of all partners' ideas and concepts.''

New Jersey, Vermont, and New York DOT and DMV also expressed concern that States have an opportunity to learn of any proposal prior to FMCSA approval, so that they have an opportunity to understand, comment, and react appropriately.

FMCSA Response: FMCSA is committed to its safety partnership with State agencies. State agencies play a vital role ensuring the safe operation of CMVs in the U.S. However, the agency does not plan to provide States with pre-notification of its decisions on waiver requests, exemption applications, pilot program proposals, nor engage in discussions or deliberations with State agencies about these matters, in a forum that is not open to public participation. Such actions would be inconsistent with the principles of the Administrative Procedure Act (5 U.S.C. 551 *et. seq.*). Discussions or deliberations between agency personnel and third parties that are intended to influence agency decisions, should be transparent. Limiting opportunity for comment to certain parties, while intentionally excluding all other interested parties, would be inappropriate.

FMCSA continues to work with State agencies to ensure adequate notification of its decisions when the information is first made available to the general public. We continue to seek public comment on applications for exemptions and proposals for pilot programs through notice in the **Federal Register**. The notice-and-comment procedure is in the public interest, so that all interested parties have an equal opportunity to comment.

FMCSA does not expect State agencies to bear responsibility for implementing section 4007 of TEA–21. We welcome State participation, to the extent States have resources to assist FMCSA in monitoring the safety performance of persons who are granted waivers or exemptions, or are allowed to participate in pilot programs.

As for FMCSA decisions to grant waivers and exemptions, or initiate pilot programs, the agency neither requires nor requests States to adopt compatible regulations, or to abandon more stringent safety regulations. First, the scope of waivers, exemptions and pilot programs is usually very limited in terms of the specific requirements for which alternative approaches to achieving safety are being considered. Second, the population of motor carriers and drivers is limited, usually through eligibility criteria for exemptions and pilot programs. In the case of waivers, the statutory requirement that waivers be issued only for non-emergency and unique events, and be limited in scope and circumstances, suggests that there will not be a large population of drivers or carriers covered by waivers at any given time. Given the statutory constraints, it is unlikely the agency would grant a waiver or exemption, or initiate a pilot program so broad in scope that States would be forced to amend or revise laws or regulations to accommodate those carriers and drivers covered by the waiver, exemption, or pilot program.

As 49 U.S.C. 31315(d) provides, no State shall enforce any law or regulation that conflicts with or is inconsistent with a waiver, exemption, or pilot program while the waiver, exemption or pilot program is in effect. Therefore, preemption of State rules applies only with respect to persons operating under a waiver or exemption, or participating in a pilot program. This means all motor carriers and drivers not operating under a waiver or exemption, or participating in a pilot program, must continue complying with all applicable State laws and regulations. Amending or revising State laws or regulations would be impractical, since such amendment or revision would be limited to drivers or carriers operating under waiver, exemption, or pilot programs only. To amend or revise State motor carrier safety laws or regulations that result in less stringent requirements than the applicable FMCSRs would be inconsistent with the Motor Carrier Safety AssistanceProgram (MCSAP) regulations, and, in some cases, would subject such rules to preemption pursuant to 49 U.S.C. 31141(c)(3). The agency's MCSAP regulations (49 CFR Part 350) concern eligibility for Federal funding to supportState motor carrier safety programs.

Documentation of Waiver or Exemption Onboard CMVs

Iowa believes the regulations should explicitly require that persons granted a waiver must carry documentation issued by the FMCSA and provide the documentation to State officials during any traffic stop or roadside inspection. Vermont requests that paperwork concerning the waiver or exemption be with the driver or carrier and available for review during roadside inspections. OOIDA believes it is important to adopt procedures and generate documentation for each waiver, exemption, or pilot program granted, so that carriers and drivers can be expeditiously identified to Federal and State enforcement officials as participants in a Federal program that exempts them from Federal and conflicting State motor carrier safety regulations.

FMCSA Response: FMCSA agrees with the commenters. We usually require persons operating under the terms and conditions of waivers, exemptions, or pilot programs to carry copies of FMCSA-issued documents to identify them as such. The only exceptions to date have been exemptions granted to motor carriers operating certain vehicles manufactured by the Ford Motor Company (Ford) and General Motors Corporation (GM), concerning fuel tank fill rates and certification labels on fuel tanks.[1] In those cases, the agency published information about the make, model and vehicle identification numbers (VINs) of the vehicles covered by the exemption. Since the vehicle manufacturers applied for the exemption on behalf of the customers operating the vehicles, developing a list of all vehicles and motor carriers operating these vehicles was unnecessary, given the nature of the exemption. FMCSA concluded that use of the make, model, and range of VINs was sufficient for enforcement personnel to determine whether a given vehicle was covered by the exemption.

Driver Physical Qualifications

Several commenters discussed the use of exemptions and pilot programs for driver physical qualifications. As EEOC stated:

> It is encouraging that the waiver and exemption provisions of section 4007 and [FMCSA's] interim implementing regulations require individualized assessment of the safety-related qualifications of persons who otherwise would be denied employment opportunities pursuant to blanket categorical exclusions under the FMCSRs. Individualized assessment of qualifications is one of the hallmarks of the Americans with Disabilities Act [ADA]. Indeed, the ADA's purposes include ensuring that qualified individuals with disabilities are not denied equal employment opportunity by virtue of exclusionary qualification standards.

J.B. Hunt recommends that pilot programs should be initiated to allow motor carriers to investigate whether more stringent medical standards could improve public safety.

Georgetown believes several of the physical standards, in particular hearing and vision, are discriminatory and violate the government's obligations

[1] The exemption concerning fuel tank fill rates and certification labels for vehicles manufactured by Ford was published on December 20, 1999 (64 FR 71184). The exemption concerning fuel tank fill rates and certification labels on vehicles manufactured by GM was published on April 26, 2000 (65 FR 24531).

under section 504 of the Rehabilitation Act. Georgetown recommends the agency should continue to reexamine those standards and revise them based on data concerning the safety of drivers who are monocular or whose hearing does not meet existing standards.

Additionally, Georgetown believes that the waivers, exemptions, and pilot program regulations do not provide adequate guidance for a driver with a disability, who seeks to establish he or she meets the requirements for an exemption. Georgetown argues that an individual driver seeking an exemption from part 391 will have no idea what to provide the agency. Georgetown also argues that the procedures in Part 381 are inappropriate, since detailed procedures for persons seeking exemptions from the vision standard has been established. Georgetown believes the agency should fully disclose the vision exemption process.

FMCSA Response: We believe part 381 provides adequate guidance for motor carriers and drivers who are interested in pursuing a waiver, exemption, or pilot program concerning physical qualifications for drivers. Since the physical qualifications rules concern medical issues that require an individualized assessment by qualified medical professionals, developing a one-size-fits-all set of procedures for the range of medical conditions which a waiver, exemption, or pilot program may be requested would be impractical.

As to whether generic guidance for specific categories of physical qualifications issues can be developed, the agency has initiated programs to accommodate persons with conditions covered by those categories. For example, the agency has a vision exemption program for drivers with an eye that fails to meet current vision standards. Interested persons need only contact the agency for detailed guidance on how to apply for an exemption. On September 3, 2003 (68 FR 52441), FMCSA published a notice of final determination to begin an exemption program for insulin dependant diabetic drivers. The notice provides the eligibility criteria for drivers who intend to apply for a diabetes exemption. The notice also provides instructions on how to obtain additional information needed to apply for the exemption. The physical qualifications process is intended to ensure that each driver is given individual attention and guidance based on his or her medical circumstances. FMCSA believes this is the most effective manner to assist drivers, and to ensure that each exemption granted achieves a level of safety equivalent to, or greater than, the level of safety that would be achieved through full compliance with the physical qualifications rules under part 391.

J.B. Hunt commented on employers having the opportunity to explore more stringent physical qualifications as a means of improving safety. The FMCSRs do not prohibit motor carriers from establishing policies that are more stringent than the safety regulations (49 CFR 390.3(d). Therefore, employers wanting to establish more stringent medical examination procedures and pass-fail criteria may do so without requesting a waiver, applying for an exemption, or proposing a pilot program.

Public Notification of Waivers

According to Advocates, the agency's procedures for administering waivers are insufficient to ensure both public awareness and safety. Advocates argues the agency has a responsibility to notify the public when a waiver from specific parts of the FMCSRs has been awarded, identify the carriers or drivers awarded the waiver, the waiver period, the public interest finding by the agency, and the finding that the waiver is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver.

IBT noted the public should be informed of the agency's disposition of waiver requests promptly after a decision is made.

AAA also believes it is important for the agency to communicate with the public about waivers, including publishing a notice in the **Federal Register** for waivers that have been granted or denied.

FMCSA Response: FMCSA understands commenters' intent to make information about waivers readily available to the public. Nevertheless, we believe there would not be much public benefit associated with the effort. FMCSA receives a small number of requests for waivers each year, and only a few of those have been granted. There is no discernible public benefit to using limited agency resources to manage a public docket on requests for waivers which, if granted, are limited to no more than three months in duration. Depending on the specific event, waivers may cover a period as short as a few hours. Also, the scope of each waiver is likely to be unique and cover a small number of drivers or motor carriers.

Given the statutory constraints for granting waivers, the specific nature of waivers, and the relatively small number granted, FMCSA does not plan to publish decisions on waivers.

Compliance Monitoring of Persons Granted Waivers or Exemptions

Advocates disagrees with the agency's decision to avoid additional roadside inspections and compliance reviews of carriers or commercial drivers receiving waivers or exemptions. As Advocates stated:

> Simply awarding exemptions and establishing initial conditions under which they shall operate is insufficient oversight and monitoring to ensure that the legislative goal of providing adequate safety countermeasures has been met. [FMCSA] cannot award exemptions and simply wait for their statutory time limit to expire. The agency has an affirmative obligation to oversee the operation of exemptions. A presumption that drivers and carriers will receive no more oversight through compliance reviews or roadside inspections to ensure that safety has not been compromised, despite approved, selective non-compliance with specific parts of the FMCSRs, is neither a responsible approach to the heavy safety duties generally imposed upon the agency by the statute, nor is it adequate conformity to the legislative direction provided by the statute.

FMCSA Response: FMCSA agrees with Advocates that granting exemptions with terms and conditions would not, by itself, satisfy the agency's obligations to monitor the safety performance of persons granted exemptions or allowed to participate in pilot programs. However, Advocates characterization of the agency's oversight of waivers, exemptions, and pilot programs does not accurately portray how the agency handles its responsibilities. FMCSA provides an appropriate level of safety oversight for all exemptions granted, which includes the Home Heating Oil Pilot Program (July 13, 2001; 66 FR 36823),[2] the only pilot program initiated since implementation of section 4007 of TEA–21. Oversight consists of reviewing roadside inspection and crash data, driving records for participating drivers, and all information that exemption grantees and pilot program participants are required to submit to the agency during the period the exemption or pilot program is in effect. FMCSA may

[2] FMCSA announced the initiation of a pilot program to grant an exemption from the weekly hours-of-service restrictions for drivers of CMVs making home heating oil deliveries that occur within a 100 air-mile radius of a central terminal or distribution point, during winter months. During the pilot program, which ended recently, participating motor carriers were allowed to ''restart'' calculations for the 60-or 70-hour rule, whichever applies, after the driver has an off-duty period encompassing two consecutive nights off-duty that include the period of midnight to 6 a.m.

exercise its statutory authority under 49 U.S.C. 506 to begin an investigation any time there is reason to believe there are violations of the safety regulations, or of the terms and conditions of a waiver, exemption, or pilot program. Furthermore, 49 U.S.C. 31315(b)(2) requires FMCSA to immediately revoke an exemption if: (1) The person fails to comply with the terms and conditions of the exemption, (2) the exemption has resulted in a lower level of safety than was maintained before the exemption was granted, or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. Chapter 313 or 49 U.S.C. 31136. Section 31315(c)(3) provides similar authority for revocation of participation of a motor carrier, commercial motor vehicle, or driver for failure to comply with the terms and conditions of the pilot program, or if continued participation would not be consistent with the goals and objectives of 49 U.S.C. Chapter 313 or 49 U.S.C. 31136.

FMCSA has granted 910 vision exemptions since 1998. As a result of the agency's on-going monitoring activities, 19 exemptions were revoked for bad driving (the drivers contributed to accidents, had their licenses suspended or revoked, or received an excessive number of moving violations), and 11 were canceled for failure to submit required information. In addition, 20 drivers were denied renewals after the first two-year period because their driving records did not meet the safety level required by the statute (equivalent to, or better than, the level of safety that would be achieved by complying with the regulations).

FMCSA believes it has the tools to effectively monitor persons operating under the terms and conditions of a waiver or exemption, or participating in a pilot program, and to take appropriate action for failure to comply with the requirements of the program. However, FMCSA does not believe motor carriers, CMVs, or drivers should be subjected to additional inspections or audits solely because a waiver or exemption has been granted, or participation in a pilot program has been approved. We believe the incentives for implementing innovative approaches to achieving safety performance goals would be overshadowed if the flexibility provided by the waiver, exemption or pilot program were coupled with more rigorous or frequent enforcement activities. We believe using Federal and State resources to conduct more frequent inspections and audits could adversely impact enforcement programs intended to identify and remove from service unsafe CMVs and drivers, as well as the resources used to target motor carriers that have demonstrated poor safety performance. Enforcement resources should be targeted at those motor carriers, drivers and vehicles that are most likely to pose a safety risk, not at potentially discouraging private-sector efforts to explore innovative approaches to achieving safety performance goals.

Adoption of Interim Regulations

FMCSA has not made any changes to its interim regulations based on the comments. On October 1, 2001, FMCSA made technical amendments to the interim regulations in Part 381 to remove references to the Federal Highway Administration, the Office of Motor Carrier and Highway Safety, and the Office of Motor Carrier Research and Standards (66 FR 4986, 49872). Part 381 remains divided into six subparts:

Subpart A—General describes the purpose and applicability of part 381, and defines certain terms used throughout the part;

Subpart B—Procedures for Requesting Waivers provides a plain-language description of waivers, the procedures for requesting a waiver and the process FMCSA will use to review waiver requests;

Subpart C—Procedures for Applying for Exemptions provides a plain-language description of exemptions, the procedures for applying for an exemption, the process FMCSA will use to review exemption applications, and the conditions under which FMCSA will revoke an exemption;

Subpart D—Initiation of Pilot Programs explains how pilot programs operate, and how a pilot program can be initiated (which includes a detailed list of informationFMCSA requests from individuals who would like to recommend that the agency start a pilot program);

Subpart E—Administration of Pilot Programs codifies in the FMCSRs a plain-language version of the statutory requirements concerning FMCSA's administration of pilot programs so that all interested parties will have a convenient reference; and

Subpart F—Preemption of State Rules codifies in the FMCSRs a plain-language version of the Federal preemption of any State law and regulation that conflicts with or is inconsistent with respect to a person operating under a waiver, exemption, or pilot program.

Regulations for Waiver and Exemption

In accordance with section 4007 of TEA–21, FMCSA is authorized to grant waivers and exemptions from any FMCSRs under statutory authority of 49 U.S.C. 31136 and chapter 313. However, section 4007 of TEA–21 does not authorize FMCSA to grant waivers and exemptions from regulations issued under other statutes. For example, the financial responsibility regulations at 49 CFR part 387, which were issued under 49 U.S.C. 31138 and 31139, pertain to transportation of passengers and property, respectively. FMCSA also does not have authority to grant waivers and exemptions from other requirements such as surety bonds and policies of insurance for motor carriers and property brokers, and surety bonds and policies of insurance for freight forwarders. These requirements, which were transferred from the former ICC, are now codified at 49 CFR part 387. These requirements are based on statutory authority at 49 U.S.C. 13101, 13301, 13906, and 14701.

In another example, FMCSA does not have authority to grant a waiver or exemption from 49 CFR 396.25,Qualifications of Brake Inspectors. This regulation establishes minimum qualifications for motor carrier employees responsible for the inspection, repair, and maintenance of CMV brake systems, and was required by the Truck and Bus Safety and Regulatory Reform Act of 1988 (49U.S.C. 31137(b)).

To assist the motor carrier industry and the general public in identifying the requirements for which waivers and exemptions may be granted, FMCSA is retaining the list in §§ 381.200, 381.300, and 381.400 which define a waiver, exemption, and pilot program, respectively. The list of regulations for which a waiver or exemption could be granted includes:

(1) Part 382 Controlled Substances and Alcohol Use and Testing;

(2) Part 383 Commercial Driver's License Standards; Requirements and Penalties;

(3) § 390.19 Motor Carrier Identification Report;

(4) § 390.21 Marking of Commercial Motor Vehicles;

(5) Part 391 Qualifications of Drivers;

(6) Part 392 Driving of Commercial Motor Vehicles;

(7) Part 393 Parts and Accessories Necessary for Safe Operation;

(8) Part 395 Hours of Service of Drivers;

(9) Part 396 Inspection, Repair, and Maintenance (except § 396.25); and

(10) Part 399 Step, Handhold, and Deck Requirements.

FMCSA excluded the accident register requirements, 49 CFR 390.15, from the list of regulations eligible for a waiver or exemption because the agency believes it has a responsibility to

monitor the crash involvement of entities operating under the terms of a waiver.

FMCSA retains the motor carrier identification report(Form MCS–150) requirement at 49 CFR 390.19 as one of the rules that may be waived. We continue to believe there is no apparent benefit to gathering information on entities that have not previously operated CMVs in interstate commerce and do not intend to do so after the term of the waiver expires.

For exemptions, FMCSA requires intrastate motor carriers and non-motor carrier entities to complete FormMCS–150 (§ 390.19), and to mark all CMVs (§ 390.21) operating in interstate commerce under the terms of the exemption because exemptions provide regulatory relief for up to two years, and may be renewed.

Summary of Procedures and Requirements

Requests for a waiver or applications for exemption should be addressed or hand-carried to the Administrator of the FMCSA. Such requests or applications need not be in any particular form, but should be typed or clearly hand-printed and include basic information, such as the identity of the person to be covered by the waiver or exemption, the name of the motor carrier or other entity responsible for using or operating CMVs during the waiver or exemption time period, and the motor carrier or other entity's principal place of business. The request or application should include a statement of: The event or CMV operation for which the waiver or exemption will be used; justification as to why the waiver or exemption is required; the regulation from which the applicant is requesting relief; estimates of the total number of drivers and CMVs that will be operated under the terms and conditions of the waiver or exemption; and an explanation of how the recipient of the waiver or exemption would ensure that a level of safety would be achieved that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation. As for exemption applications, the written request must also include an assessment of the safety impacts the exemption may have, such as the impacts that would be experienced if the exemption is not granted, and include a copy of all research reports, technical papers, and other publications and documents referenced in the application.

The complete list of information to be included in the requests for waivers and applications for exemptions is provided in § 381.210, How do I request a waiver?, and § 381.310, How do I apply for an exemption?. These requirements are consistent with the statutory language in TEA–21.

Review of Waiver Requests

The Office of Policy and Program Development is responsible for reviewing waiver requests and making recommendations to the Administrator. A copy of the decision signed by the Administrator will be sent to the applicant. It will include the terms and conditions of the waiver, or the reason(s) for denial of the waiver.

Review of Exemption Applications

The review process for exemption applications differs because of the requirements in section 4007 of TEA–21. TheOffice of Policy and Program Development reviews exemption applications. After FMCSA reviews an application for completeness, we will publish a notice in the **FederalRegister** requesting public comments regarding the application. After the comments are reviewed, the Office of Policy and Program Development will make a recommendation to the Administrator. Thereafter, FMCSA will publish a final notice of determination in the **Federal Register**.

Initiation and Management of Pilot Programs

Although TEA–21 does not require FMCSA to develop regulations concerning pilot programs, we are retaining, in subparts D and E of part 381, information describing how to propose a pilot program, and statutory requirements for managing a pilot program. FMCSA believes that including information about pilot programs in the FMCSRs provides a more convenient reference to the motor carrier industry and the general public than does Title 49 of the United StatesCode. The regulations indicate that FMCSA has authority to initiate pilot programs after publishing notice and providing opportunity for public comment. They also indicate the types of information that interested parties should submit to the agency, if they would like to recommend a pilot program. The information presented in subpart E of part 381 is intended to be a plain-language version of the statutory requirements for the administration of pilot programs.

Preemption of State Rules

Section 4007(d) of TEA–21 indicates that during the time period that a waiver, exemption, or pilot program is in effect, no State shall enforce a law or regulation that conflicts with or is inconsistent with the waiver, exemption, or pilot program. FMCSA is retaining the preemption language in part 381, and will also include the language in the waiver documents and **Federal Register** notices concerning exemptions and pilot programs. The agency continues to believe this approach will ensure that State officials are notified about the Federal preemption authority. Including such language in the waiver, and in the exemption and pilot program notices, will enable motor carriers to present inspectors with one document which informs them of the terms and conditions of the waiver, exemption, or pilot program. This document will also advise the inspectors that State laws and regulations that conflict with the waiver, exemption or pilot program are automatically preempted, and the duration of the preemption.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

This action is not a significant regulatory action within the meaning of Executive Order 12866, or significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. This action adopts as final, interim regulations contained in 49 CFR part 381, concerning rules and procedures for handling requests for waivers and applications for exemptions, and the initiation and administration of pilot programs. These rules will help promote increased cooperation between the private sector and the government by providing a mechanism for exploring alternatives to certain safety regulations, while ensuring a level of safety equivalent to, or greater than, the level obtained through compliance with the regulations. We believe adopting the interim regulations at part 381 will result in incremental, although not substantial, economic benefits in cases where the alternatives provide a more cost-effective approach to ensuring motor carrier safety. FMCSA believes the economic impact of this final rule to be minimal. Comments were requested on this subject in the IFR, but none were received. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), we evaluated the effects of this final rule on small entities

and determined that it does not have a significant economic impact on a substantial number of small entities. As discussed in the section above, this rule adopts interim regulations concerning requests for waivers, applications for exemptions from the FMCSRs, and the initiation and administration of pilot programs. The provisions concerning waivers and exemptions will be especially beneficial to small entities, since these entities may be more in need of regulatory relief than larger companies. The regulations were written in question-and-answer format using plain language to help ensure that small entities understand how to request a waiver and apply for an exemption, and how the agency will handle such requests and applications. The provisions concerning pilot programs are likely to be less beneficial to small entities. Pilot programs would generally require a large number of participating motor carriers and drivers willing to operate under identical terms and conditions. By contrast, waivers and exemptions may be carrier- or driver-specific and therefore better suited to the needs of small entities. As with the IFR, this final rule does not require small entities to take any actions unless they request a waiver, apply for an exemption, or participate in a pilot program. The information that would be required for a waiver or an exemption has been kept to a minimum. For this reason, FMCSA certifies this final action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*] does not apply, because this final rule does not contain information collection requirements subject to Office of Management and Budget (OMB) approval. However, waivers, exemptions, and pilot programs include certain information collection requirements as part of the terms and conditions for the regulatory relief granted. In addition, the agency is required by section 4007 of TEA–21 to monitor the implementation of exemptions to ensure compliance with the terms and conditions, and to ensure sufficient recordkeeping by participants in pilot programs to facilitate the collection and analysis of data. Therefore, FMCSA will consider the information collection requirements for any special recordkeeping requirements associated with the waiver, exemption, or pilot program, and, if necessary, request approval from OMB.

National Environmental Policy Act (NEPA)

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). We have determined under our environmental procedures Order 5610.1, published on March 1, 2004, that this action is categorically excluded (CE) under Appendix 2, paragraph 6(b.) of the Order from further environmental documentation. This CE relates to regulations describing FMCSA's procedures that persons applying for a waiver, requesting an exemption, and proposing a pilot program must follow. The regulations also explain what procedures FMCSA will use to evaluate the waiver application, exemption request, or proposed pilot program, including notifying the public, for the purpose of ensuring transportation safety. In addition, the agency has determined that the action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental impact statement.

We have also analyzed this action under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. We have determined that approval of this action is exempt from the CAA's General Conformity requirement since it pertains only to requirements persons must follow to request waivers and exemptions from the FMCSRs, and sets forth procedures the FMCSA will use to process these requests for waivers, applications for exemptions and those to initiate pilot programs. We also determined that this action will not result in any emissions increase, nor will it have any potential to result in emissions that are above the general conformity rule's minimum emission threshold levels. Moreover, it is reasonably foreseeable that the rule will not increase total commercial motor vehicle mileage, change the routing of commercial motor vehicles, how commercial motor vehicles operate or the commercial motor vehicle fleet-mix of motor carriers.

Energy Supply, Distribution, or Use

The FMCSA has analyzed this action 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,'' because it is not a significant regulatory action under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. This final rule does not contain such a mandate, and the requirements of Title II do not apply.

Civil Justice Reform

We reviewed this rule under Executive Order 12988, Civil Justice Reform, and determined it meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks andSafety Risks. This rule is not economically significant and does not concern an environmental risk to the health or safety of children.

Taking of Private Property

FMCSA certifies that this rule will not affect a taking of private property or otherwise involve taking implications, under Executive Order 12630, Governmental Actions and Interference with Constitutionally ProtectedProperty Rights.

Intergovernmental Review of Federal Programs

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. Regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Federalism

FMCSA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132 (Federalism). We have determined that this rule does not have a substantial direct effect on States, nor would it limit the policymaking discretion of the States. Nothing in this document preempts any State law or regulation.

Although the rule itself does not preempt State and local laws and

regulations, the waivers and exemptions that could be granted under the authority of 49 U.S.C. 31136(e) and 31315 would preempt such laws or regulations, if they conflict with or are inconsistent with the terms and conditions of the waivers or exemptions. Also, exemptions granted as part of a pilot program would preempt State and local laws and regulations which conflict with or are inconsistent with the terms and conditions of the pilot program.

FMCSA will consider the preemptive effect of each waiver prior to granting the waiver. With regard to exemptions and pilot programs, State and local governments will have the opportunity to respond to the **Federal Register** notices required by section 4007 of TEA–21 and inform FMCSA of concerns about preemption during the time period that an exemption or pilot program would be in effect.

List of Subjects in 49 CFR Part 381

Motor carriers.

Final Rule

■ The interim regulations published December 8, 1998 at 63 FR 67600, as amended on October 1, 2001 at 66 FR 49867, Part 381 of Subchapter B, Chapter III of Title 49 of the Code of Federal Regulations, are adopted without further revision.

Issued on: August 17, 2004.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 04–19155 Filed 8–19–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2004–18905]

RIN 2127–AJ42

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds, in part, to petitions for reconsideration of the amendments we made in November 2003 to the advanced air bag provisions in the occupant crash protection standard. Because of time constraints faced by vehicle manufacturers in certifying vehicles under procedures established in the November 2003 final rule, we bifurcated our response. This document is the second of two documents responding to the petitions. It addresses those issues raised by petitioners regarding positioning of the 5th percentile adult female, six-year-old and three-year-old test dummies; determination of target points during low risk deployment tests; specifications for child restraint systems for automatic suppression system tests; and clarification of seat adjustment procedures.

DATES: *Effective date:* The amendments made in this rule are effective September 1, 2004.

Petitions: Petitions for reconsideration must be received by October 4, 2004 and should refer to this docket and the notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

Note that all petitions received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Rulemaking Analysis and 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 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Louis Molino, Office of Crashworthiness Standards, at (202) 366–2264, and fax him at (202) 493–2739.

For legal issues, you may contact Christopher Calamita, Office of Chief Counsel, at (202) 366–2992, and fax him at (202) 366–3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant crash protection,* specifies performance requirements for the protection of vehicle occupants in crashes (49 CFR 571.208). On May 12, 2000, we published an interim final rule that amended FMVSS No. 208 to require advanced air bags (65 FR 30680: Docket No. NHTSA 00–7013; Notice 1) (Advanced Air Bag Rule). Among other things, the rule addressed the risk of serious air bag-induced injuries, particularly for small women and young children, and amended FMVSS No. 208 to require that future air bags be designed to minimize such risk. The Advanced Air Bag Rule established a rigid barrier crash test with a 5th percentile adult female test dummy, as well as several low risk deployment and out-of-position tests using a range of dummy sizes.

The agency received multiple petitions for reconsideration to the Advanced Air Bag Rule. Petitioners raised a large number of concerns about the various test procedures in their written submissions. To address these issues adequately, the agency held a technical workshop so that we could better understand the specific concerns and better determine if the test procedures needed refinement.[1] The agency then addressed each petition in a **Federal Register** notice published on December 18, 2001 and made several changes to the Advanced Air Bag Rule (66 FR 65376; Docket No. NHTSA 01–11110). These changes included a number of refinements to the test dummy positioning procedures in the barrier tests and the low risk deployment tests. The December 2001 final rule also amended the list of child restraint systems in Appendix A for use in certain compliance tests through the removal of child restraints no longer in production and the addition of other child restraints.

On November 19, 2003, the agency published a final rule that responded, in part, to petitions for reconsideration of the amendments made in the December

[1] The workshop was held on December 6, 2000, at NHTSA's Vehicle Research and Test Center in East Liberty, Ohio. Representatives of 18 vehicle manufacturers and 13 seat, sensor, and dummy manufacturers attended the workshop. Five different vehicles were used as test vehicles. Some of the five had been provided by manufacturers because they were experiencing particular problems with following the existing test procedures in these vehicles.

2001 final rule to the Advanced Air Bag Rule (68 FR 65179; Docket No. NHTSA 03–16476, Notice 1). In particular, we amended portions of FMVSS No. 208 regarding seat positioning procedures when using the 5th percentile adult female test dummy in the barrier test and the low risk deployment test and when using the 3-year-old and 6-year-old test dummies in the low risk deployment test; the fore and aft seat location for rear facing child restraint systems (RFCRSs); and the seat track position for the low risk deployment test. We also responded to petitions for reconsideration regarding test dummy positioning procedure issues, specifically those addressing positioning of the feet of the 5th percentile adult female test dummy; positioning of out-of-position test dummies; and positioning of test dummy hands. The November 2003 final rule amended the definitions of ''Plane C'' and ''Plane D'' as they relate to test dummy positioning, Point 1 under the low risk deployment tests, and addressed other reference points and definitions. The November 2003 final rule also amended the list of child restraint systems in Appendix A to be used in certain compliance testing.

II. Petitions for Reconsideration

In response to the November 2003 final rule, the agency received seven petitions for reconsideration. Petitions were submitted by Evenflo Company, Inc. (Evenflo), Maserati S.p.A. (Maserati), Alliance of Automobile Manufacturers (Alliance), TRW Automotive (TRW), Automotive Occupant Restraint Council (AORC), and American Honda Motor Co., Inc. (Honda). A petition was also received from Ferrari S.p.A. (Ferrari), but was later withdrawn without a subsequent submission. Petitioners have asked the agency to reconsider the following issues.

Left Foot—5th Percentile Adult Female Test Dummy (Barrier Test)

Honda petitioned the agency to permit positioning of the left foot of the 5th percentile adult female test dummy on a vehicle's footrest, a position, it stated, that is more representative of a ''real world'' configuration. Honda explained that in some situations, the current procedure for positioning the left foot may still result in a portion of the left foot remaining on a vehicle's footrest or sloping part of the floorpan near the foot rest. The petitioner stated that such a position could influence measured injury criteria.

Right Foot—5th Percentile Adult Female Test Dummy (Barrier Test)

In its petition for reconsideration, the Alliance stated that right foot positioning procedure for the 5th percentile adult female test dummy in the rigid barrier test could result in an unrealistic position. The Alliance explained that under the procedures in S16.3.2.2.1(a) and S16.3.2.2.3 of FMVSS No. 208, a test dummy's foot can be positioned such that it does not contact either the floor or toe boards, necessitating the use of a spacer block. It further stated that such a position is unrealistic and could affect the foot and lower leg kinematics. To address this issue, the Alliance requested the procedure be amended to reflect a more ''real-world'' position. In the alternative, the Alliance requested that the agency specify the material properties of the spacer block in order to reduce potential test variability.

Chin-on-Rim Test Procedure

The Alliance and Honda requested that the agency amend the chin-on-rim test procedure to provide for consistency and repeatability in testing out-of-position drivers. The Alliance requested that for vehicle models with adjustable and non-adjustable steering wheels, the adjustable steering wheel be positioned as close as possible to the position of the non-adjustable steering wheel. Honda requested that the agency specify the shape of the spacer blocks that are to be used when needed to position the dummy's chin on the steering wheel. Honda stated that the pre-test load applied to the neck can vary with the shape of the spacer blocks.

Head-on-Instrument Panel Test Procedure

Honda petitioned the agency to permit rotation of the lower legs when positioning the head of the six-year-old dummy on the instrument panel in order to prevent bracing by the feet on the vehicle floor. Honda stated that this bracing prevents the torso from being rotated into position.

Honda also requested that spacer blocks be permitted when space is present between the six-year-old dummy's feet and the vehicle floor. Honda stated that variation in the position of the feet due to lack of contact with the floor results in variation in the force required to maintain the thigh angle. Again with regard to the six-year-old dummy, Honda requested that the head-on-instrument panel test procedure specify the point and direction for applying the 222 N force to prevent differences in dummy position.

Plane C and Plane D

The AORC and Maserati petitioned the agency to revert to the method established in the December 2001 final rule for defining Planes C and D. In the alternative, Maserati, along with the Alliance, requested clarification of the procedure for determining the volumetric centers of an uninflated and statically inflated air bag, which are used to define Planes C and D. Maserati stated that the new definition of Plane C may alter the positioning of the dummy in low risk deployment testing by 50 mm and that the effect of this altered position on compliance is unknown at this time. Similarly, the Alliance stated that one of its members has reported that the redefined Plane C may alter the positioning of the dummy by 30 mm.

Child Restraint Systems—Appendix A

Evenflo and TRW have requested that Appendix A be amended to reflect child restraint systems (CRSs) currently manufactured and available for retail purchase. Evenflo stated that several of the discontinued CRS models in Appendix A are no longer available. TRW alternatively petitioned the agency to create a separate Appendix to indicate which CRSs will be used in testing beyond 2006. To facilitate the use of automatic suppression systems based on weight detection, Honda petitioned the agency to limit the weight of CRSs. Honda also petitioned the agency to permit 18 months of lead time for the amended Appendix A.

The Alliance requested that the agency develop a procedure for installing CRSs equipped with lower anchorages and tether attachments. The Alliance stated that artificially tight installations can cause some occupant classification systems to misclassify the occupant. The Alliance also requested that the effective date for the revised Appendix A be postponed until September 1, 2005.

Seat Positioning Procedures

The Alliance has requested that the agency specify a vertical seat position for use in determining the seat cushion reference angle. Specifically, the Alliance requested that the seat be positioned in the full rear and full down position when determining the seat cushion reference angle. The Alliance also requested that S16.2.10.3.2 and S16.2.10.3.3 of FMVSS No. 208 be amended to specify that the reference point used in these sections is the seat cushion reference point.

Effective Date of the Test Procedures

Several petitioners stated that the January 20, 2004 effective date for the test procedures established in the November 2003 final rule did not provide sufficient lead time. There was concern that the revisions, particularly to the procedure for defining of Planes C and D, would require mid-model year recertification.

In response to petitioners' concerns with the effective date for the new procedures the agency published a final rule January 27, 2004, which permits manufacturers to temporarily certify vehicles according to the test procedures required prior to the effective date of the November 2003 final rule until September 1, 2004 (69 FR 3837; Docket No. 03–16476; Notice 2). Today's document addresses the remaining issues.

III. Summary of Response to Petitions

As previously noted, this document addresses the following issues raised in the petitions for reconsideration: issues involving dummy positioning procedures, target points referencing Plane C and Plane D, issues associated with the child restraints specified in Appendix A of FMVSS No. 208, and corrections to the regulatory text.

This document amends the procedure for placement of the left foot of the 5th percentile adult female test dummy in the barrier crash. As amended, the procedure specifies that both outboard and inboard hip rotation is permitted to avoid foot contact with a vehicle's footrest or pedal. We are maintaining the positioning procedure established for the 5th percentile adult female test dummy's right foot, and decline to establish material specifications for the spacer blocks permitted under this positioning procedure. Further, we decline to establish material, shape, or size specifications for spacer blocks permitted under the chin on rim low risk deployment test procedure.

We are amending the dummy positioning procedure for the head-on-instrument panel low risk deployment test. The procedure is amended to provide greater flexibility in positioning the 6-year-old and 3-year-old test dummies. We are also clarifying the direction of the application of force used to position the test dummies.

The agency is maintaining the current methods for determining Planes C and D, which reference an axis based on the volumetric centers of an undeployed and statically inflated air bag.

We are also maintaining Appendix A as established in the November 2003 final rule. However, we are amending the effective date of Subpart C for testing with CRSs equipped with lower anchor attachments and a tether strap (LATCH) to specify that these restraints need not be tested prior to September 1, 2006.

Additionally, we are making several amendments to provide consistency within the regulation with regards to incorporated procedures and terminology.

IV. Test Dummy Positioning Procedures

A. Left Foot—5th Percentile Adult Female Test Dummy (Barrier Test)

In response to the petition from Honda, we are amending the procedure for placement of the left foot of the 5th percentile adult female test dummy in the barrier crash to permit hip rotation to both the inboard and the outboard. This will help address Honda's concern that the left foot may have a position that is partially on the footrest. While this amendment should assist in avoiding this partial contact, we recognize that there may be instances in which partial footrest contact is unavoidable.

The December 2001 final rule amended the driver's left foot positioning requirement by stipulating that the foot must not be placed on a vehicle's footrest, wheel-well projection, clutch, brake, or accelerator pedal. In response to petitions, the agency provided additional positioning flexibility so that pedal and footrest avoidance would be possible. S16.3.2.2.6, which specifies positioning procedures to avoid undesirable foot contact, was amended to permit foot flexion at the ankle in conjunction with the previously permitted foot rotation and hip rotation. The agency also provided guidance on the priority for dummy adjustment in avoiding prohibited contact.

The agency is unsure why Honda was unable to avoid footrest contact using the procedure provided. The petitioner did not provide details as to why contact occurred. However, we believe it may have been due to the restriction in S16.3.2.2.6(c) that hip rotation must be to the outboard. The restriction on hip rotation was originally established when only pedal contact by the left foot was to be avoided. It was not the agency's intent to restrict hip rotation to the outboard only. Accordingly, we are amending the procedure to permit rotation to both the outboard and the inboard. This should address Honda's concern that the test dummy's left foot can have a position that is partially on the footrest. We are also amending the procedure to clarify that repositioning of the leg to avoid pedal and footrest contact is applicable to S16.3.2.2.4, S16.3.2.2.5 and S16.3.2.2.6.

We are denying Honda's petition to permit placement of the left foot on the footrest. The agency has previously addressed this issue in the November 2003 final rule when establishing the current procedures. Honda has not provided any additional information to justify our reaching a different conclusion now. Although the positioning procedure allows partial footrest contact, this should arise if the only way to avoid pedal contact is footrest contact. Again, as we stated in the November 2003 final rule, we believe this conflict will be rare. In addition, placement of the entire foot on the footrest in some vehicle designs may be unnatural or impossible to achieve. Further, we have no data that indicate variations in foot positioning significantly affects injury measurements.

B. Right Foot—5th Percentile Adult Female Test Dummy (Barrier Test)

The agency is maintaining the positioning procedure for the right foot of the 5th percentile adult female test dummy as currently specified for the barrier test under the November 2003 final rule. In response to a petition for reconsideration and a request for information, we previously amended the right foot positioning procedure for the 5th percentile adult female test dummy in the rigid barrier test. The November 2003 final rule addressed the situation in which the right heel of the 5th percentile adult female test dummy cannot initially contact the vehicle floor, by allowing for the extension of the lower leg toward the accelerator pedal rather than leaving the leg hanging vertically. If the heel can initially contact the floor, but cannot maintain contact with the floor and reach the accelerator pedal, lower leg extension with the heel leaving the floor is also the preferred position. If the final position results in the heel being off the floor, FMVSS No. 208 permits the use of a spacer block to provide support. Figure 13 in FMVSS No. 208 provides the block dimensions.

The November 2003 final rule stated that lowering the seat is not an acceptable solution for getting the test dummy's right foot to reach the floor. The agency believes that the procedure established in the November 2003 final rule is the most appropriate, and notes that the Alliance submitted additional comments withdrawing its concern that the positioning was potentially unrealistic. Further, the agency declines to specify the material properties of the

spacer block. We do not have reason to believe that the material used for the spacer block will affect injury measurements when a vehicle is subjected to a barrier test with a 5th percentile female dummy. Further, the petitioner did not submit any data to demonstrate otherwise.

C. Chin-on-Steering Wheel Test Procedure

We are maintaining the 5th percentile adult female test dummy positioning procedure for the low risk deployment (LRD) test as currently specified. The Advanced Air Bag Rule adopted a LRD test to address the risk air bags pose to out-of-position drivers, particularly those of small stature. The test is performed using two ''worst case'' positions: placing the dummy's chin on the module and placing the dummy's chin on the steering wheel. As originally established in the Advanced Air Bag Rule, the 5th percentile adult female test dummy's chin was to be placed on the steering wheel rim ''without loading the neck.'' In the December 2001 final rule, we permitted the use of supporting blocks to position the dummy and removed the prohibition from loading the dummy's neck. However, we did not specify the shape of the supporting blocks.

Honda petitioned the agency to specify the position and shape of the support blocks, stating that variation in the blocks can result in variation in the load applied to the test dummy's neck. As a result, Honda continued, neck injury data are not repeatable. Honda submitted neck injury criteria measurements from test dummies positioned with three different support block configurations. Honda's data demonstrated that the different configurations resulted in different initial neck load value ranges and different neck injury criteria measurement ranges (See Honda's petition; Docket No. NHTSA–2003–16476–9).

Honda's petition regarding this issue involves the procedure as amended by the December 2001 final rule. Since Honda's petition was submitted long after the deadline for petitioning for reconsideration of that final rule, we are treating Honda's petition as a petition for rulemaking per 49 CFR 553.35(a). We are denying the petition because Honda did not show that any difference in the injury criteria measurements was statistically significant. Further, Honda did not demonstrate that these differences would affect a manufacturer's ability to comply with the injury criteria requirements. The highest neck injury measurement recorded by Honda was one-third that of the maximum permitted under the standard.

We do not believe that the shape, material, or placement of the spacer blocks will produce any statistically significant difference in injury measurements when a 5th percentile adult female test dummy is subjected to a LRD test. Therefore, we are not specifying the material, shape, or positioning of the spacer blocks.

Further, we are not amending the procedure in response to the Alliance's request that for vehicle models with adjustable and non-adjustable steering wheels, the adjustable steering wheel should be positioned as close as possible to the position of the non-adjustable steering wheel. As stated above, the goal of compliance under this test condition is to provide a worst-case position (See 68 FR 65183). The purpose of the regulatory provision allowing movement of an adjustable steering wheel is to increase the probability of actually attaining this position. Additionally, the Alliance did not provide any data to demonstrate that the desired test dummy position would be attainable with the adjustable steering wheel positioned as it requested. Therefore, we do not support the Alliance's request for this change.

D. Head-on-Instrument Panel Test Procedure

To address concerns raised by Honda regarding a potential inability to properly position a six-year-old test dummy, as well as a three-year-old test dummy, in the head-on-instrument panel test, we are amending the procedure to provide greater flexibility in positioning the 6-year-old test dummy. We are also clarifying the direction of the application of force used to position the test dummy.

The November 2003 final rule clarified the positioning procedure for the 6-year-old and three-year-old test dummies in the head-on-instrument panel LRD test (S22.4.3.5 and S24.4.3.5) to accommodate the situation in which the dummy torso could not be pushed against the instrument panel without forcing the femur angle to change. The procedure was amended to specify that the test dummy could be rotated about its seat contact and then about the test dummy's H-point and that a 222 N load may be applied to achieve contact between the head/torso and the instrument panel.

In Honda's petition, it stated that clarification provided in the November 2003 final rule might not permit dummy placement as specified, particularly in vehicle designs in which the seat is very low relative to the floor pan. The petitioner indicated that in vehicles with very low seats, the test dummy's feet contact the floor pan, resulting in rotation about the foot contact. Honda suggested that the only apparent way to relieve this contact was to extend the dummy's legs. The agency agrees with Honda, and is amending the procedure to permit extension of a test dummy's legs in instances in which contact with the floor pan prohibits rotation about the seat contact or test dummy's H-point.

Honda also stated that the procedure as amended in the November 2003 final rule failed to specify the direction of the application of the 222 N load on the test dummy's torso. S22.4.3.5 and S24.4.3.5 specify that the load is to be applied ''towards the front of the vehicle on the spine of the dummy between the shoulder blades.'' However, to provide additional clarity, the procedure is amended to provide that, in relation to the test dummy, the 222 N load is to be applied perpendicular to the thorax instrument cavity rear face.

Further, Honda requested that spacer blocks be permitted to support a test dummy in order to maintain the appropriate femur angle, if the dummy loses contact with the seat during the positioning procedure. We note that S24.4.3.6 currently permits the use of spacer blocks to support dummy position. This allowance includes the use of spacer blocks to support a test dummy's lower legs, and addresses Honda's request.

V. Plane C and Plane D

The agency is maintaining the current method, as established in the November 2003 final rule, for determining Planes C and D. Planes C and D are used to identify target points for positioning the 5th percentile adult female, 6-year-old, and 3-year-old test dummies in the LRD test procedures. Both planes reference an axis based on the volumetric centers of the undeployed and statically inflated air bag. The November 2003 final rule established the statically inflated air bag method (SIABM) to provide a more objective method for determining the location of Planes C and D.

Maserati and the AORC requested that the procedure revert back to the previous method for determining the air bag target points. In its petition, Maserati stated that the new method of targeting would result in a 50 mm drop in the location of the target point in one of its vehicles. In the alternative, Maserati requested additional lead time under the current procedure. The Alliance, stating that one of its members believes that the new method will result

in a 30 mm drop, also requested additional lead time. The agency has already addressed the issue of lead time in the January 2004 final rule.

We continue to believe that the SIABM targeting method for positioning test dummies provides a more objective procedure and more clearly defines the agency's intent when it originally specified ''the opening through which the air bag deploys.'' The agency realizes that, particularly for top mounted air bags, the target point under the SIABM will be lower than under the previous technique. A lower target point may actually be more favorable for top mounted designs, which have already been shown to be less injurious to out-of-position occupants. This is due to the fact that the dummy will be farther from the initial path of the deploying air bag and will experience lower forces. Petitioners have not demonstrated how a lowering of the target point would adversely affect their ability to meet the LRD injury criteria. As stated in the January 2004 final rule, we believe the new positioning procedures should not require any more than minor modifications by affected manufacturers.

To provide additional clarification with regards to the SIABM, we note that each LRD test that requires an air bag target point also dictates the positions of interior components for the actual LRD test in question. Thus, in determining the volumetric center of the statically inflated air bag, these same component positions should be honored.

Additionally, the November 2003 final rule established the SIABM in S22.4.1.2 (3-year-old LRD), S24.4.1.2 (6-year-old LRD), 26.2.2 (5th percentile adult female chin on module), but inadvertently failed to amend S26.3.3 (5th percentile adult female chin on rim). That omission is corrected in today's final rule.

VI. Child Restraint Systems—Appendix A

We are maintaining Appendix A as established in the November 2003 final rule. However, in response to petitions, we will not require manufacturers to certify that their vehicles comply with the suppression requirements using the LATCH-equipped CRSs until September 1, 2006.

If manufacturers rely on an airbag suppression system to minimize the risk to occupants in child restraint systems, FMVSS No. 208 requires manufacturers to certify that the vehicles comply with the suppression requirements when tested with the CRSs specified in Appendix A (See S19, S21 and S23). Appendix A provides a list of CRSs that the agency has determined to be representative of the systems currently in use in the vehicle fleet. In the November 2003 final rule, we revised the list to add two new CRSs and remove three from Appendix A. The added systems are equipped with LATCH, a configuration required under FMVSS No. 213, *Child restraint systems,* since September 1, 2002.

The Alliance petitioned the agency to extend the effective date for the new Appendix A until September 1, 2005. It stated that the lead time provided, approximately nine and a half months, was not adequate. Further, the Alliance stated that the agency did not provide any notice or opportunity for public comment regarding the amendments to Appendix A.

In the Advanced Air Bag Rule, the agency stated that the appendix would be periodically updated to reflect changes and designs in available CRSs (65 FR 30710). In the December 2001 final rule, we did note that generally one year of lead time will be provided for amendments to the appendix, but stressed the importance of establishing a list that is representative of real world usage (66 FR 65390).

The revisions to Appendix A in the November 2003 final rule were made in response to issues raised by Evenflo. The agency amended Appendix A in the November 2003 final rule to include LATCH-equipped CRSs in an effort to be representative of real world use. The agency recognized that the lead time provided for manufacturers would be less than 12 months. However, the agency also recognized that CRSs have been required to be LATCH equipped since September 1, 2002.

To ensure the robustness of automatic suppression systems, a manufacturer must be able to certify that the system operates under conditions representative of real world use. This includes operation when used with CRS designs that have been sold for almost two years. However, as the Alliance noted, the agency does not yet have a compliance test procedure in place for testing seats installed by means of the LATCH anchorages. Therefore, the effective date for the LATCH equipped CRSs in Appendix A is extended until September 1, 2006. By that time, the agency will have developed a compliance test procedure for securing a LATCH-equipped CRS to a vehicle using the lower anchor attachments.

In its petition, the Alliance also noted that Subpart C of Appendix A includes the Britax Expressway ISOFIX seat. The Alliance correctly points out that Subpart C is described as containing forward-facing convertible seats, yet the Expressway is not a convertible seat and the manufacturer of the Expressway recommends against using it in the rearward direction. Although not a convertible restraint, the Expressway is recommended for children with a weight as low as 20 lb. The Expressway design, while recommended for infants, cannot be clearly categorized under the existing subparts of Appendix A containing infant restraint systems (*i.e.*, Subpart B—rear-facing infant seats, Subpart C—forward-facing convertible seats). However, the agency determined that the Expressway is best placed in Subpart C, which contains restraints used in a forward-facing configuration.

S19, *Requirements to provide protection for infants in rear facing and convertible child restraints and car beds,* specifies that under the automatic suppression compliance option, a vehicle must comply when tested using a 12-month-old test dummy and child restraint systems listed in Subpart B and Subpart C. The test procedure at S20 for S19, incorporates procedures representative of CRS misuse to reflect real world CRS installation. This includes installing a CRS listed in Subpart C in both the forward- and rear-facing position when belted and unbelted. Consistent with the goal of reflecting real world misuse, we will test the Britax ISOFIX Expressway in both directions. However, we note that if a manufacturer does not provide instructions for routing a vehicle's safety belt to secure a restraint for a given position (*e.g.*, rear-facing), we will not test the restraint belted in that position. We will test the restraint facing forward in a belted configuration and both forward and rear-facing in an unbelted configuration to represent misuse. We are also amending Subpart C and Subpart D (forward facing toddler/belt-positioning booster systems) to describe more accurately the CRSs that are in these subparts.

Both Evenflo and TRW commented that Appendix A contains CRSs no longer in production and no longer available. Evenflo provided suggestions as to possible replacements. TRW stated that the lack of availability of CRSs in Appendix A as impeding restraint system development. TRW petitioned the agency to include currently available CRSs or to create a separate appendix for use beyond 2006.

We are not amending Appendix A as requested by Evenflo and TRW. As stated above, the appendix is intended to be representative of CRSs in use by the public, not merely CRSs that are currently on the market. The November 2003 final rule established a procedure for amending Appendix A. Seats will be

added or removed when real world usage would make this appropriate.

Additionally, we do not believe Appendix A is hindering development of an LRD restraint system for infants, as suggested by TRW. Developmental tests need not use every CRS in Appendix A. These systems should be sufficiently robust that the absence of one or more seats represented in Appendix A in the development process should not impact compliance.

Honda's petition to restrict the maximum weight of CRSs is beyond the scope of the rulemaking notices that resulted in the November 2003 final rule. Such a restriction would need to be addressed through an amendment to FMVSS No. 213 and not FMVSS No. 208. Honda has resubmitted this as a rulemaking petition for FMVSS No. 213. This issue will be addressed in a separate notice.

VII. Seat Positioning Procedures

S16 specifies the test procedures for rigid barrier test requirements using a 5th percentile adult female test dummy. S16.2.10.3.1 specifies that the seat cushion reference line is set to the middle of a range consisting of all possible angles with the seat cushion reference point (SCRP) in the rearmost position. The Alliance petitioned the agency to specify that a seat be placed in the full down position before the seat cushion is positioned to the middle of the range. It stated that the range of angles may vary with vertical position.

The agency recognized that a range of seat or seat cushions angles might vary with vertical position. As such, once a seat's SCRP is moved to the rearmost position, the range of angles is determined through use of any and all controls, other than those that primarily move the seat or seat cushion fore or aft. This includes those that adjust vertical position. To our knowledge, determination of the range is not dependent on the starting vertical position prior to moving the SCRP rearward.

VIII. Miscellaneous

In the November 2003 final rule, the agency replaced the term ''right front outboard'' with ''front outboard passenger'' when referring to the passenger air bag in S20.4.9, S22.4.4 and S24.4.4. It was our intent to make similar amendments for all references to passenger air bags, but inadvertently, this was not done. Therefore, we are replacing ''right front outboard,'' ''right front passenger,'' and ''right front'' with ''front outboard passenger'' in S20, S22, and S24.

Additionally, the Alliance noted that in S16.2.10.3.2 and S16.2.10.3.3, the word ''cushion'' was left out of the phrase ''seat cushion reference point.'' We also identified a similar omission in S26.3.1. To rectify this appropriately, the agency is amending the text and use the acronym SCRP in each of these sections.

IX. Effective Date

The amendments adopted in today's document are effective beginning September 1, 2004. This date is the same as the compliance date established in the January 2004 final rule for the November 2003 final rule. Today's final rule extends the compliance date for testing with specified restraint CRSs for a period of two years. If today's final rule was not effective September 1, 2004, manufacturers would be required to comply with the amendments in the November 2003 final rule on that date despite the fact that the compliance date for certain amendments is extended in today's document. Manufacturers would be required to comply with the delayed provisions for an interim period until today's document became effective at some later date. This could result in unnecessary costs for manufacturers. Further, we have determined that the changes made in this document do not impact a manufacturer's ability to certify a vehicle.

X. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document has not been reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review,'' because it was not deemed significant under the executive order. The rulemaking action has also been determined to not be significant under the Department's regulatory policies and procedures. The agency has concluded that the impacts of today's amendments are so minimal that a full regulatory evaluation is not required. The amendments adopted in this document will neither increase nor decrease to cost of compliance. Readers who are interested in the overall costs and benefits of advanced air bags are referred to the agency's Final Economic Assessment for the May 2000 final rule (Docket No. NHTSA–2000–7013–02). NHTSA has determined that the costs and benefits analysis provided in that document are unaffected by today's rule.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This action will not have a significant economic impact on a substantial number of small businesses because it does not significantly change the requirements of the May 2000 final rule or the December 2001 final rule. Small organizations and small governmental units will not be significantly affected since the potential cost impacts associated with this rule remain unchanged from the December 2001 final rule.

C. National Environmental Policy Act

NHTSA has analyzed these amendments for the purposes of the National Environmental Policy Act and determined that they will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). While the May 2000 final rule is likely to result in over $100 million of annual expenditures by the private sector, today's final rule makes only small adjustments to the December 2001 rule, which, in turn, made only small adjustments to the May 2000 rule. Accordingly, this final rule will not result in a significant increase in cost to the private sector.

F. Executive Order 12778 (Civil Justice Reform)

This final rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not establish any new information collection requirements.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Standard No. 208 is extremely difficult to read as it contains multiple cross-references and has retained all of the requirements applicable to vehicles of different classes at different times. Because portions of today's rule amend existing text, much of that complexity remains. Additionally, the availability of multiple compliance options, differing injury criteria and a dual phase-in have added to the complexity of the regulation, particularly as the various requirements and options are accommodated throughout a phase-in. Once the phase-ins are complete, much of the complexity will disappear. At that time, it would be appropriate to completely revise Standard No. 208 to remove any options, requirements, and differentiations as to vehicle class that are no longer applicable.

J. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us.

This rulemaking directly involves decisions based on health risks that disproportionately affect children, namely, the risk of deploying air bags to children. However, this rulemaking serves to reduce, rather than increase, that risk.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [2] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

The agency is not aware of any new voluntary consensus standards addressing the changes made to the May 2000 final rule, the December 2001 final rule or the November 2003 final rule as a result of this final rule.

[2] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specifications and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

L. Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.208 is amended by revising S16.2.10.3.2, S16.2.10.3.3, S16.3.2.2.4, S16.3.2.2.6, S20.1.6, S20.2.2.3, S20.3.2, S22.1.3, S22.2.1.1, S22.2.1.3, S22.2.2, S22.2.2.1(a), S22.2.2.3(a), S22.2.2.5(a), S22.2.2.6(b), S22.2.2.7(b), S22.2.2.8(a), S22.3.2, S22.4.3.5, S22.5.1, S24.1.3, S24.2.3 heading and (a), S24.3.2, S24.4.3.5, S26.3.1, S26.3.3, Appendix A to § 571.208, and adding S16.3.2.2.7 to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S16.2.10.3.2 Using only the control that primarily moves the seat fore and aft, move the SCRP to the full forward position.

S16.2.10.3.3 If the seat or seat cushion height is adjustable, other than by the controls that primarily move the seat or seat cushion fore and aft, determine the maximum and minimum heights of the SCRP, while maintaining, as closely as possible, the angle determined in S16.2.10.3.1. Set the SCRP at the midpoint height with the seat cushion reference line angle set as closely as possible to the angle determined in S16.2.10.3.1. Mark location of the seat for future reference.

* * * * *

S16.3.2.2.4 Place the left foot on the toe-board with the rearmost point of the heel resting on the floor pan as close as

possible to the point of intersection of the planes described by the toe-board and floor pan.

* * * * *

S16.3.2.2.6 If the left foot does not contact the floor pan, place the foot parallel to the floor and place the lower leg as perpendicular to the thigh as possible.

S16.3.2.2.7 When positioning the test dummy under S16.3.2.2.4, S16.3.2.2.5, and S16.2.2.6, avoid contact between the left foot of the test dummy and the vehicle's brake pedal, clutch pedal, wheel well projection, and foot rest. To avoid this contact, use the three foot position adjustments listed in paragraphs (a) through (c). The adjustment options are listed in priority order, with each subsequent option incorporating the previous. In making each adjustment, move the foot the minimum distance necessary to avoid contact. If it is not possible to avoid all prohibited foot contact, give priority to avoiding brake or clutch pedal contact.

(a) Rotate (abduction/adduction) the test dummy's left foot about the lower leg,

(b) Plantar flex the foot,

(c) Rotate the left leg about the hip in either an outboard or inboard direction.

* * * * *

S20.1.6 Except as otherwise specified, if the car bed, rear facing child restraint, or convertible child restraint has an anchorage system as specified in S5.9 of FMVSS No. 213 and is tested in a vehicle with a front outboard passenger vehicle seat that has an anchorage system as specified in FMVSS No. 225, the vehicle shall comply in the belted tests with the restraint anchorage system attached to the vehicle seat anchorage system and the vehicle seat belt unattached. It shall also comply in the belted test requirements with the restraint anchorage system unattached to the vehicle seat anchorage system and the vehicle seat belt attached. The vehicle shall comply in the unbelted tests with the restraint anchorage system unattached to the vehicle seat anchorage system.

* * * * *

S20.2.2.3 For bucket seats, ''Plane B'' refers to a vertical plane parallel to the vehicle longitudinal centerline through the longitudinal centerline of the front outboard passenger vehicle seat cushion. For bench seats, ''Plane B'' refers to a vertical plane through the front outboard passenger seat parallel to the vehicle longitudinal centerline the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

* * * * *

S20.3.2 Place a 49 CFR part 572 subpart O 5th percentile adult female test dummy at the front outboard passenger seating position of the vehicle, in accordance with procedures specified in S16.3.3 of this standard, except as specified in S20.3.1, subject to the fore-aft seat positions in S20.3.1. Do not fasten the seat belt.

* * * * *

S22.1.3 Except as otherwise specified, if the child restraint has an anchorage system as specified in S5.9 of FMVSS No. 213 and is tested in a vehicle with a front outboard passenger vehicle seat that has an anchorage system as specified in FMVSS No. 225, the vehicle shall comply with the belted test conditions with the restraint anchorage system attached to the vehicle seat anchorage system and the vehicle seat belt unattached. It shall also comply with the belted test conditions with the restraint anchorage system unattached to the vehicle seat anchorage system and the vehicle seat belt attached.

* * * * *

S22.2.1.1 Install the restraint in the front outboard passenger vehicle seat in accordance, to the extent possible, with the child restraint manufacturer's instructions provided with the seat for use by children with the same height and weight as the 3-year-old child dummy.

* * * * *

S22.2.1.3 For bucket seats, ''Plane B'' refers to a vertical longitudinal plane through the longitudinal centerline of the seat cushion of the front outboard passenger vehicle seat. For bench seats, ''Plane B'' refers to a vertical plane through the front outboard passenger vehicle seat parallel to the vehicle longitudinal centerline the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

* * * * *

S22.2.2 *Unbelted tests with dummies.* Place the 49 CFR part 572 subpart P 3-year-old child dummy on the front outboard passenger vehicle seat in any of the following positions (without using a child restraint or booster seat or the vehicle's seat belts):

S22.2.2.1 *Sitting on seat with back against seat back.*

(a) Place the dummy on the front outboard passenger seat.

* * * * *

S22.2.2.3 *Sitting on seat with back not against seat back.*

(a) Place the dummy on the front outboard passenger seat.

* * * * *

S22.2.2.5 *Standing on seat, facing forward.*

(a) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline, within ±10 mm (±0.4 in), as the center of the steering wheel rim. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion, within ±10 mm (±0.4 in). Position the dummy in a standing position on the front outboard passenger seat cushion facing the front of the vehicle while placing the heels of the dummy's feet in contact with the seat back.

* * * * *

S22.2.2.6 *Kneeling on seat, facing forward.*

* * * * *

(b) Position the dummy in a kneeling position in the front outboard passenger vehicle seat with the dummy facing the front of the vehicle with its toes at the intersection of the seat back and seat cushion. Position the dummy so that the spine is vertical. Push down on the legs so that they contact the seat as much as possible and then release. Place the arms parallel to the spine.

* * * * *

S22.2.2.7 *Kneeling on seat, facing rearward.*

* * * * *

(b) Position the dummy in a kneeling position in the front outboard passenger vehicle seat with the dummy facing the rear of the vehicle. Position the dummy such that the dummy's head and torso are in contact with the seat back. Push down on the legs so that they contact the seat as much as possible and then release. Place the arms parallel to the spine.

* * * * *

S22.2.2.8 *Lying on seat.* This test is performed only in vehicles with 3 designated front seating positions.

(a) Lay the dummy on the front outboard passenger vehicle seat such that the following criteria are met:

(1) The midsagittal plane of the dummy is horizontal,

(2) The dummy's spine is perpendicular to the vehicle's longitudinal axis,

(3) The dummy's arms are parallel to its spine,

(4) A plane passing through the two shoulder joints of the dummy is vertical,

(5) The anterior of the dummy is facing the vehicle front,

(6) The head of the dummy is positioned towards the passenger door, and

(7) The horizontal distance from the topmost point of the dummy's head to the vehicle door is 50 to 100 mm (2–4 in).

(8) The dummy is as far back in the seat as possible.

* * * * *

S22.3.2 Place a 49 CFR part 572 subpart O 5th percentile adult female test dummy at the front outboard passenger seating position of the vehicle, in accordance with procedures specified in S16.3.3 of this standard, except as specified in S22.3.1. Do not fasten the seat belt.

* * * * *

S22.4.3.5 If head/torso contact with the instrument panel has not been made, maintain the angle of the thighs with respect to the horizontal while applying a force towards the front of the vehicle on the spine of the dummy between the shoulder joints, perpendicular to the thorax instrument cavity rear face, until the head or torso comes into contact with the vehicle's instrument panel or until a maximum force of 222 N (50 lb) is achieved. If the head/torso is still not in contact with the instrument panel, hold the femurs and release the 222 N (50 lb) force. While maintaining the relative angle between the torso and the femurs, roll the dummy forward on the seat cushion, without sliding, until head/torso contact with the instrument panel is achieved. If seat contact is lost prior to or during femur rotation out of the horizontal plane, constrain the dummy to rotate about the dummy H-point. If the dummy cannot be rolled forward on the seat due to contact of the dummy feet with the floor pan, extend the lower legs forward, at the knees, until floor pan contact is avoided.

* * * * *

S22.5.1 The test described in S22.5.2 shall be conducted with an unbelted 50th percentile adult male test dummy in the driver seating position according to S8 as it applies to that seating position and an unbelted 5th percentile adult female test dummy either in the front outboard passenger vehicle seating position according to S16 as it applies to that seating position or at any fore-aft seat position on the passenger side.

* * * * *

S24.1.3 Except as otherwise specified, if the booster seat has an anchorage system as specified in S5.9 of FMVSS No. 213 and is used under this standard in testing a vehicle with a front outboard passenger vehicle seat that has an anchorage system as specified in FMVSS No. 225, the vehicle shall comply with the belted test conditions with the restraint anchorage system attached to the FMVSS No. 225 vehicle seat anchorage system and the vehicle seat belt unattached. It shall also comply with the belted test conditions with the restraint anchorage system unattached to the FMVSS No. 225 vehicle seat anchorage system and the vehicle seat belt attached. The vehicle shall comply with the unbelted test conditions with the restraint anchorage system unattached to the FMVSS No. 225 vehicle seat anchorage system.

* * * * *

S24.2.3 *Sitting back in the seat and leaning on the front outboard passenger door.*

(a) Place the dummy in the seated position in the front outboard passenger vehicle seat. For bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion, within ±10 mm (±0.4 in). For bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the longitudinal centerline of the vehicle, within ±10 mm (±0.4 in), as the center of the steering wheel.

* * * * *

S24.3.2 Place a 49 CFR part 572 subpart O 5th percentile adult female test dummy at the front outboard passenger seating position of the vehicle, in accordance with procedures specified in S16.3.3 of this standard, except as specified in S24.3.1. Do not fasten the seat belt.

* * * * *

S24.4.3.5 If head/torso contact with the instrument panel has not been made, maintain the angle of the thighs with respect to the horizontal while applying a force towards the front of the vehicle on the spine of the dummy between the shoulder joints, perpendicular to the thorax instrument cavity rear face, until the head or torso comes into contact with the vehicle's instrument panel or until a maximum force of 222 N (50 lb) is achieved. If the head/torso is still not in contact with the instrument panel, hold the femurs and release the 222 N (50 lb) force. While maintaining the relative angle between the torso and the femurs, roll the dummy forward on the seat cushion, without sliding, until head/torso contact with the instrument panel is achieved. If seat contact is lost prior to or during femur rotation out of the horizontal plane, constrain the dummy to rotate about the dummy H-point. If the dummy cannot be rolled forward on the seat due to contact of the dummy feet with the floor pan, extend the lower legs forward, at the knees, until floor pan contact is avoided.

* * * * *

S26.3.1 Place the seat and seat cushion in the position achieved in S16.2.10.3.1. If the seat or seat cushion is adjustable in the vertical direction by adjustments other than that which primarily moves the seat or seat cushion fore-aft, determine the maximum and minimum heights of the SCRP at this position, while maintaining the seat cushion reference line angle as closely as possible. Place the SCRP in the mid-height position. If the seat back is adjustable independent of the seat, place the seat back at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. Position an adjustable head restraint in the lowest position.

* * * * *

S26.3.3 Mark a point on the steering wheel cover that is longitudinally and transversely, as measured along the surface of the steering wheel cover, within ±6 mm (±0.2 in) of the point that is defined by the intersection of the steering wheel cover and a line between the volumetric center of the smallest volume that can encompass the folded undeployed air bag and the volumetric center of the static fully inflated air bag. Locate the vertical plane parallel to the vehicle longitudinal centerline through the point located on the steering wheel cover. This is referred to as ''Plane E.''

* * * * *

Appendix A to § 571.208—Selection of Child Restraint Systems

A. The following car bed, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that is manufactured on or after the effective date specified in the table below and that has been certified as being in compliance with 49 CFR 571.208 S19:

	Effective and termination dates	
	January 17, 2002	September 1, 2004.
Cosco Dream Ride 02–719	Effective	Remains Effective.

B. Any of the following rear facing child restraint systems, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that is manufactured on or after the effective date and prior to the termination date specified in the table below and that has been certified as being in compliance with 49 CFR 571.208 S19. When the restraint system comes equipped with a removable base, the test may be run either with the base attached or without the base.

	Effective and termination dates	
	January 17, 2002	September 1, 2004
Britax Handle with Care 191	Effective	Remains Effective.
Century Assura 4553	Effective	Remains Effective.
Century Avanta SE 41530	Effective	Terminated.
Century Smart Fit 4543	Effective	Remains Effective.
Cosco Arriva 02727	Effective	Remains Effective.
Cosco Opus 35 02603	Effective	Terminated.
Evenflo Discovery Adjust Right 212	Effective	Remains Effective.
Evenflo First Choice 204	Effective	Remains Effective.
Evenflo On My Way Position Right V 282	Effective	Terminated.
Graco Infant 8457	Effective	Remains Effective.

C. Any of the following forward facing toddler and forward-facing convertible child restraint systems, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that is manufactured on or after the effective date and prior to the termination date specified in the table below and that has been certified as being in compliance with 49 CFR 571.208 S19, or S21. (**Note:** Any child restraint listed in this subpart that is not recommended for use in a rear-facing position by its manufacturer is excluded from use in S20.2.1.4):

	Effective and termination dates	
	January 17, 2002	September 1, 2006
Britax Roundabout 161	Effective	Remains Effective.
Britax Expressway		Effective.
Century Encore 4612	Effective	Remains Effective.
Century STE 1000 4416	Effective	Remains Effective.
Cosco Olympian 02803	Effective	Remains Effective.
Cosco Touriva 02519	Effective	Remains Effective.
Evenflo Horizon V 425	Effective	Remains Effective.
Evenflo Medallion 254	Effective	Remains Effective.
Safety 1st Comfort Ride 22–400		Effective.

D. Any of the following forward-facing toddler/belt positioning booster systems and belt positioning booster systems, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration as test devices to test the suppression system of a vehicle that is manufactured on or after the effective date and prior to the termination date specified in the table below and that has been certified as being in compliance with 49 CFR 571.208 S21 or S23:

	Effective and termination dates	
	January 17, 2002	September 1, 2004
Britax Roadster 9004	Effective	Remains Effective.
Century Next Step 4920	Effective	Remains Effective.
Cosco High Back Booster 02–442	Effective	Remains Effective.
Evenflo Right Fit 245	Effective	Remains Effective.

Issued: August 13, 2004.

Jacqueline Glassman,

Chief Counsel.

[FR Doc. 04–18967 Filed 8–19–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 072104B]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Adjustment of recreational fishery retention limits.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) Angling category daily retention limit should be adjusted in order to enhance recreational fishing opportunities for the remainder of the 2004 fishing year that began June 1, 2004, and ends May 31, 2005. Vessels permitted in the Atlantic Highly Migratory Species (HMS) Angling and Atlantic HMS Charter/Headboat categories are eligible to land BFT under the BFT Angling category quota. The adjustments to the daily retention limits for BFT are specified in the **SUPPLEMENTARY INFORMATION** section of this document. This action is being taken to provide enhanced private recreational and Charter/Headboat fishing opportunities in all areas without risking overharvest of the Angling category quota.

DATES: The daily recreational retention limit adjustments for vessels permitted in the Atlantic HMS Angling category or the Atlantic HMS Charter/Headboat category are effective August 20 through September 20, 2004, inclusive.

The default daily recreational retention limit at 50 CFR 635.23(b) for all vessels fishing under the Angling category quota (i.e., both HMS Angling and Charter/Headboat vessels) is effective September 21, 2004, through the remainder of the fishing year, May 31, 2005, inclusive.

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

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among various domestic fishing categories. A recommendation of ICCAT requires that NMFS limit the catch of school BFT, measuring 27 to less than 47 inches (69 to less than 119 cm) curved fork length (CFL), to no more than 8 percent by weight of the total domestic landings quota over each four-consecutive-year period. NMFS is implementing this ICCAT recommendation through annual and inseason adjustments to the school BFT retention limits, as necessary, and through the establishment of a school BFT reserve (64 FR 29090, May 28, 1999; 64 FR 29806, June 3, 1999). The ICCAT recommendation allows for interannual adjustments for overharvests and underharvests, provided that the 8 percent landings limit is not exceeded over the applicable 4–consecutive-year period. The 2004 fishing year is the second year in the current accounting period. This multi-year block quota approach provides NMFS with the flexibility to enhance fishing opportunities and to collect information on a broad range of BFT size classes while minimizing the risk of overharvest of the school size class.

Implementing regulations for the Atlantic tuna fisheries at § 635.23 set the daily retention limits for BFT and allow for adjustments to the daily retention limits in order to provide for maximum utilization of the quota over the longest possible period of time. NMFS may increase or decrease the retention limit for any size class BFT or change a vessel trip limit to an angler limit or vice versa. Such adjustments to the retention limits may be applied separately for persons aboard a specific vessels type, such as private vessels, headboats and charter boats.

On June 23, 2004 (69 FR 34960), NMFS adjusted the daily recreational retention limit, in all areas, for vessels permitted in the HMS Angling category, to two school, large school, or small medium BFT, measuring 27 to less than 73 inches (69 to less than 185 cm) CFL, per vessel per day/trip. This retention limit remained in effect through July 21, 2004, inclusive. Starting on July 22, 2004, the daily retention limit for vessels permitted in the HMS Angling category, reverted to one school, large school, or small medium BFT, per vessel per day/trip.

Based on communications with fishermen, available quota, and historical information regarding fish migration patterns and availability off the east coast, particularly off the mid-Atlantic states, NMFS has determined that a modest increase in the daily retention limit, of limited duration, is appropriate and necessary without risking overharvest of available quota. Thus NMFS adjusts the daily BFT retention limit, in all areas, for vessels permitted in the HMS Angling category, effective August 20 through September 20, 2004, inclusive, to two BFT per vessel per day/trip, in any combination of the school, large school, or small medium size classes.

NMFS is aware of industry concerns that a recreational retention limit of less than three or four BFT per vessel per day/trip does not provide reasonable fishing opportunities for charter/headboats, which carry multiple fee-paying passengers. Charter/headboat operators have requested a modified retention limit that recognizes a fee-paying client's willingness to book charters in advance based on potential retention limits. NMFS published a final rule that clarified the procedures to set differential BFT retention limits to provide equitable fishing opportunities for all types of fishing vessels (December 18, 2002; 67 FR 77434).

NMFS previously adjusted the daily recreational retention limit, in all areas, for vessels permitted in the HMS Charter/Headboat category, to three school, large school, or small medium BFT, per vessel per day/trip, through July 21, 2004 (June 23, 2004, 69 FR 34960). Starting on July 22, 2004, the daily retention limit for vessels permitted in the HMS Charter/Headboat category, also reverted to one school, large school, or small medium BFT, per vessel per day/trip. Based on communications with fishermen and the nature of charter/headboat fishing operations stated above, NMFS adjusts the daily BFT retention limit, in all areas, for vessels permitted in the HMS Charter/Headboat category, effective August 20 through September 20, 2004, inclusive, to three BFT per vessel per day/trip, in any combination of the school, large school, or small medium size classes.

Effective September 21, 2004, through the remainder of the fishing year, May 31, 2005, inclusive, the default daily recreational retention limit at 50 CFR 635.23(b)), will apply in all areas, for all vessels fishing under the Angling category quota (i.e., both HMS Angling and Charter/Headboat vessels). The default retention limit is one school, large school, or small medium BFT, measuring 27 to less than 73 inches (69

to less than 185 cm) CFL, per vessel per day/trip.

Monitoring and Reporting

NMFS selected the daily retention limits and the duration of the daily retention limit adjustments after examining past catch and effort rates and the available quota for the 2004 fishing year. NMFS will continue to monitor the BFT fishery closely through the Automated Landings Reporting System, state harvest tagging programs in North Carolina and Maryland, and the Large Pelagics Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or, to enhance scientific data collection from, and fishing opportunities in, all geographic areas. Additionally, NMFS may determine that an allocation from the school BFT reserve is warranted to further fishery management objectives.

Closures or subsequent adjustments to the daily retention limit, if any, will be published in the **Federal Register**. In addition, anglers may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9305 for updates on quota monitoring and retention limit adjustments. All BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS Automated Landings Reporting System via toll-free phone at (888) 872–8862; or the Internet (*www.nmfspermits.com*); or, if landed in the states of North Carolina or Maryland, to a reporting station prior to offloading. Information about these state harvest tagging programs, including reporting station locations, can be obtained in North Carolina by calling (800) 338–7804, and in Maryland by calling (410) 213–1531.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action. BFT traditionally start to migrate during the late summer and are currently available in the northern area. NMFS has already provided a 1–month window of enhanced fishing opportunities to fishermen off the coasts of mid-Atlantic states from mid-June to mid-July. In order to balance concerns regarding continued utilization of available quota while not exceeding allotted amounts and at the same time provide for recreational fishing opportunities along all of the Atlantic coast NMFS needs to act promptly to provide enhanced fishing opportunities to northern area fishermen similar to those previous provided to the mid-Atlantic area. NMFS is now aware of an increase in BFT available in the northern area fishing grounds. Delay in increasing the retention limits would adversely affect those northern area Angling and Charter/Headboat category vessels that have a limited window of opportunity to access recreational size class BFT as the fish are expected to continue to migrate and will no longer be accessible to anglers in this region. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., allows the retention of more fish), there is also good cause under 5 U.S.C. 553(d) to waive the delay in effectiveness of this action.

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

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

Dated: August 16, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–19165 Filed 8–17–04; 2:34 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040429134–4135–01; I.D. 081604A]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #6—Adjustments of the Commercial Fishery from the U.S.-Canada Border to Cape Falcon, Oregon

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

ACTION: Modification of fishing season; request for comments.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR was modified with a revised landing provision that no vessel may possess, land, or deliver more than 125 chinook for the open period of July 16 through July 19, 2004. The fishery then reverted back to the regulations as announced for 2004 ocean salmon fisheries and will continue until the chinook quota or coho quota are taken, or September 15, which ever is earlier. The fishery was reopened on July 22, with an open cycle of Thursday through Monday prior to August 11, and Wednesday through Sunday thereafter, and a landing and possession limit of 125 chinook per vessel per each 5–day open period. This action was necessary to conform to the 2004 management goals. The intended effect of this action was to allow the fishery to operate within the seasons and quotas specified in the 2004 annual management measures.

DATES: Adjustment for the area from the U.S.-Canada Border to Cape Falcon, OR effective 0001 hours local time (l.t.), July 16, 2004, until the chinook quota or coho quota are taken, or 2359 hours l.t., September 15, 2004, whichever is earlier; after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2005 annual management measures. Comments will be accepted through September 7, 2004.

ADDRESSES: Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the *2004salmonIA6.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include [docket number and/or RIN number] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The NMFS Regional Administrator (RA) modified the season for the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR to reopen on July 16 through July 19, with the revised provision that no vessel may possess, land, or deliver more than 125 chinook for each open period. The fishery then reverted to the regulations as announced

for 2004 ocean salmon fisheries and continues until the chinook quota or coho quota are taken, or September 15, whichever is earlier. The fishery reopened on July 22, with an open cycle of Thursday through Monday prior to August 11, and Wednesday through Sunday thereafter, and a landing and possession limit of 125 chinook per vessel per each 5–day open period. On July 14 the Regional Administrator had determined available catch and effort data indicated that the effort was less than predicted inseason and that restricting the fishery to slow the catch of chinook to allow more time for fishers to access more of the coho quota was no longer needed.

All other restrictions remain in effect as announced for 2004 ocean salmon fisheries. This action was necessary to conform to the 2004 management goals. Modification of fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i) and (ii).

In the 2004 annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), NMFS announced the commercial fishery for all salmon in the area from the U.S.-Canada Border to Cape Falcon, OR would open July 8 through the earlier of September 15, or a 14,700–chinook preseason guideline, or a 67,500–coho quota. The 67,500–coho quota included a subarea quota of 8,000 coho for the area between the U.S.-Canada border and the Queets River, WA. The fishery was scheduled to be open Thursday through Monday prior to August 11, and Wednesday through Sunday thereafter, with the restriction that no vessel may possess, land, or deliver more than 125 chinook for each 5–day open period.

The fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, was modified by Inseason Action #5 to open July 8 and close at midnight on July 12, 2004, then to reopen on July 16 through midnight on July 19, 2004, with the provision that no vessel may possess, land, or deliver more than 100 chinook for each open period (69 FR 43345, July 20, 2004). The fishing season was modified to slow the chinook catch rate and avoid exceeding the chinook quota. The fishery was scheduled to be reevaluated by an inseason conference call on July 14, and any further adjustments announced.

On July 14, 2004, the RA consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the chinook and coho catch rate, and effort data indicated that the effort during the first open period was lower than expected and that restricting the fishery to slow the catch of chinook could be rescinded without foreclosing opportunity for fishers to access more of the coho quota. As a result, on July 14 the states recommended, and the RA concurred, that the area from the U.S.-Canada Border to Cape Falcon, OR reopen on July 16 through midnight l.t. on July 19, 2004 (4 days open), with the revised provision that no vessel may possess, land, or deliver more than 125 chinook for each open period. The fishery would then revert to the regulations as announced for 2004 ocean salmon fisheries and would continue until the chinook quota or coho quota are taken, or September 15, which ever is earlier. The fishery was reopened on July 22, with an open cycle of Thursday through Monday prior to August 11, and Wednesday through Sunday thereafter, and a landing and possession limit of 125 chinook per vessel per each 5–day open period. All other restrictions that apply to this fishery remain in effect as announced in the 2004 annual management measures.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the already described action was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to allow fishers access to the available fish at the time the fish were available. The AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of these actions would unnecessarily limit fishers appropriately controlled access to available fish during the scheduled fishing season.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: August 16, 2004.

Alan D. Risenhoover,

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

[FR Doc.04–19166 Filed 8–19–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 161
Friday, August 20, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AC50

Community Reinvestment

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC), is proposing revisions to 12 CFR 345 implementing the Community Reinvestment Act (CRA) that would change the definition of ''small bank'' to raise the asset size threshold to $1 billion regardless of holding company affiliation; add a community development activity criterion to the streamlined evaluation method for small banks with assets greater than $250 million and up to $1 billion; and expand the definition of ''community development'' to encompass a broader range of activities in rural areas. In addition to seeking comment on this proposal, the FDIC is also seeking comments on these and any other options.

DATES: Comments must be received on or before September 20, 2004.

ADDRESSES: You may submit comments, identified by RIN number 3064–AC50 by any of the following methods:

- Agency Web site: *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivered/Courier: The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.
- E-mail: *comments@FDIC.gov.* Include RIN number 3064–AC50 in the subject line of the message.
- Public Inspection: Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

Instructions: Submissions received must include the agency name and RIN for this rulemaking. Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424; or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707; Robert W. Mooney, Chief, CRA and Fair Lending Policy Section, Division of Supervision and Consumer Protection; Deirdre Ann Foley, Senior Policy Analyst, Division of Supervision and Consumer Protection, (202) 898–6612; or Pamela Freeman, Policy Analyst, Division of Supervision and Consumer Protection, (202) 898–6568 , Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Executive Summary

The Federal Deposit Insurance Corporation (FDIC), is proposing revisions to 12 CFR 345 implementing the Community Reinvestment Act (CRA) that would: (a) change the definition of ''small bank'' to raise the asset size threshold to $1 billion regardless of holding company affiliation; (b) add a community development activity criterion to the streamlined evaluation method for small banks with assets greater than $250 million and up to $1 billion; and (c) expand the definition of ''community development'' to encompass a broader range of activities in rural areas.

In making this proposal, the FDIC also considered other options such as raising the threshold for small banks to $1 billion with no community development criterion, and raising the threshold for small banks to $500 million with no community development criterion. As a result, in addition to seeking comment on this proposal, the FDIC is also seeking comments on these and any other options.

In 1995, the FDIC, along with the other Federal banking agencies (the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Office of Thrift Supervision (OTS)) (collectively, ''the agencies''), adopted major amendments to the CRA regulations. In connection with those amendments, the agencies committed to reviewing the effectiveness of the CRA regulations. Thus, on July 19, 2001, the agencies published an advance notice of proposed rulemaking (ANPR), seeking public comment on a wide range of questions concerning the CRA regulations. 66 FR 37602 (July 19, 2001). The agencies received about four hundred comments on the ANPR.

On February 6, 2004, the agencies issued a Notice of Proposed Rulemaking (NPR), developed following the agencies' review of the CRA regulations and the comments received on the ANPR.[1] 69 FR 5729 (Feb. 6, 2004). In the February 2004 NPR, the agencies stated that the CRA regulations were essentially sound, but were in need of some updating to keep pace with changes in the financial services industry. Notably, to reflect economic change in the industry and reduce unwarranted burden consistent with ongoing efforts to identify and reduce regulatory burden where appropriate and feasible, the agencies proposed to amend the definition of ''small bank'' to mean an institution with total assets of less than $500 million, without regard to any holding company affiliation. This change would take into account substantial institutional asset growth and consolidation in the banking and thrift industries since the $250 million definition was adopted in 1995.

In light of certain responses found in the comment letters responding to the February 2004 NPR, the FDIC has decided to publish for comment this NPR with respect to how ''small banks'' are defined and evaluated and other matters. The FDIC, in keeping with its commitment to review its regulations implementing the CRA, seeks comments on whether this proposal presented here would: enhance the effectiveness of the CRA regulations and CRA evaluations by addressing concerns about community development needs, including those of rural communities; and reduce regulatory burden by updating the regulation in light of changes in the banking industry over the past ten years. The FDIC seeks

[1] This NPR is referred to throughout this document as ''the February 2004 NPR.''

further comment on the impact of the new proposal on banks regulated by the FDIC and on how such a change would impact those banks' activities in their local communities. This proposal does not address predatory lending or other aspects of the February 2004 NPR. It is anticipated that the February 2004, proposal will not be acted upon until a final decision is made regarding the small bank definition issue and other matters raised in this notice.

Introduction

After considering the comments on the NPR (69 FR 5729), the FDIC is proposing revisions to 12 CFR 345, implementing the CRA (12 U.S.C. 2901 *et seq.*). This proposal would revise the definitions of ''community development'' in 12 CFR 345.12(g), and of ''small bank'' in 12 CFR 345.12(u). In addition, this proposal would amend the ''small bank performance standards'' in 12 CFR 345.26, and the CRA ratings guidance set out for ''small banks'' in 12 CFR 345, Appendix A, subpart (d).

Background

In 1977, Congress enacted the CRA to encourage insured banks and thrifts to help meet the credit needs of their entire communities, including low- and moderate-income communities, consistent with safe and sound lending practices. In the CRA, Congress provided that regulated financial institutions are required to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business, and that the convenience and needs of communities include the need for credit as well as deposit services.

In 1995, when the agencies adopted major amendments to regulations implementing the CRA, the agencies committed to reviewing the amended regulations in 2002 for their effectiveness in placing performance over process, promoting consistency in evaluations, and eliminating unnecessary burden. 60 FR 22156 (May 4, 1995). The review was initiated in July 2001 with the publication in the **Federal Register** of an ANPR 66 FR 37602 (July 19, 2001). We indicated that we would determine whether and, if so, how the regulations should be amended to better evaluate financial institutions' performance under CRA, consistent with the Act's authority, mandate, and intent. We solicited comment on the fundamental issue of whether any change to the regulations would be beneficial or warranted, and on other aspects of the regulations. About 400 comment letters were received, most from banks and thrifts of varying sizes and their trade associations (''financial institutions'') and local and national nonprofit community advocacy and community development organizations (''community organizations'').

The comments reflected a consensus that fundamental elements of the regulations are sound, but demonstrated a disagreement over the need and reasons for change. Based on those comments, in February 2004, the agencies proposed limited amendments in two major areas. First, to reduce unwarranted burden, we proposed to amend the definition of ''small institution'' to mean an institution with total assets of less than $500 million, regardless of the size of its holding company. Second, to better address abusive lending practices in CRA evaluations, we proposed specific amendments to provide that the agencies will take into account, in assessing an institution's overall CRA performance, evidence that the institution, or any affiliate whose loans have been included in the institution's CRA performance evaluation, has engaged in illegal credit practices, including unfair or deceptive practices, or a pattern or practice of secured lending based predominantly on the liquidation or foreclosure value of the collateral, where the borrower cannot be expected to be able to make the payments required under the terms of the loan.

The FDIC received nearly 1,000 comment letters in response to the February 2004 NPR. As described below, the FDIC has decided to provide notice and seek further comment on the ''small bank'' definition issue and other matters. The current proposal adjusts the ''small bank'' definition to include all banks that, as of December 31 of either of the prior two calendar years, had total assets of up to $1 billion, without regard to holding company affiliation. This proposal does not address or rescind any other aspect of the February 2004 NPR.

The following data is intended to provide additional context for the discussion of this issue. When the $250 million definition was adopted in the 1994/1995 time period, 19.6% of insured depository institutions were classified as large institutions, and they held 86.2% of total bank and thrift assets. As of March 31, 2004, 24.6% of insured depository institutions were classified as large institutions, and they held 93.3% of total bank and thrift assets. As of that same date, 12.1% of insured depository institutions, holding 89% of assets, were larger than $500 million. And, 6.3% of insured depository institutions, holding 85.1% of assets, were larger than $1 billion. In sum, on an industry-wide basis, while increasing the small institution size to $1 billion would result in a decrease in the percentage of institutions considered ''large,'' the percentage of industry assets held by large institutions would decrease to 85.1%—down from 86.2% when the $250 million level was adopted in 1995.

This proposal, however, would only cover state nonmember banks. Because these banks tend to be smaller than the industry average, the impact on banks directly supervised by FDIC is different from the impact on the overall industry.

In 1995, 10.6% of the banks supervised by the FDIC were classified as large banks, and those banks held 66.7% of the assets of banks supervised by FDIC. As of March 31, 2004, 20.9% of the banks supervised by the FDIC held over $250 million in assets, and they had 79.8% of the assets of the banks supervised by the FDIC . Increasing the small bank definition to $500 million would, in 2004, result in 9.3% of the banks supervised by the FDIC, with 67.9% of assets, being large banks. Increasing the small bank definition to $1 billion would result in 4.3% of the banks supervised by the FDIC, with 57.9% of assets, being large banks. In sum, increasing the definition of small banks to $1 billion would result in a decline in the percentage of state nonmember banks classified as large banks from 10.6% to 4.3%, and a decline in the percentage of assets of state nonmember banks being held by large banks declining from 66.7% in 1995 to 57.9%

Comment Letters on the ''Small Bank'' Definition

As noted above, the FDIC received almost 1,000 comments on the February 2004 NPR, including a letter from 31 United States Senators and rejoinders to that letter, all of which we have accepted as comment letters. The commenters were distributed among industry entities, community organizations, and individuals. As stated above, we also received comments from Federal legislators and one state regulator. All together, the FDIC received nearly 900 comment letters that specifically addressed the ''small bank'' proposal. Of those comment letters, FDIC received 534 letters clearly in favor of increasing the size limit in the definition of small banks, and 334 letters against the proposal. Of the letters in favor of the proposal, 475 of the commenters favored a higher asset threshold than the amount proposed in the NPR. The most

common amount mentioned in those letters was a threshold of $1 billion.

The comment letters in favor of raising the small bank threshold beyond the proposed $500 million threshold to $1 billion, or more, generally stated that higher amount would be appropriate for two primary reasons. First, the commenters stated that keeping the focus of small institutions on lending, which the small institution examination does, would be entirely consistent with the purpose of CRA, which is to ensure that the Agencies evaluate how institutions help to meet the credit needs of the communities they serve. Those commenters also suggested that the large bank test requirements were proving to be unworkable because multi-billion dollar banks were regularly outbidding smaller banks for qualified investments. Second, the commenters stated that raising the limit to $1 billion would have only a small effect on the amount of total industry assets covered under the large bank tests, yet, the additional burden relief provided for the institutions with assets under $1 billion would be substantial.

In contrast, community organizations generally expressed concern about the likely effects of the proposed change on residents of rural communities and residents of states with smaller financial institutions. These commenters stated that the large bank CRA examination does a better job of encouraging investment in the community than the small bank examination does. For example, these banks, according to these commenters, would no longer be held accountable under CRA exams for investing in products such as Low Income Housing Tax Credits, which, they contend, have been a major source of affordable rental housing. The commenters also either questioned the amount of burden relief that would be afforded to financial institutions, or stated that under CRA value to the community was paramount to the incremental burden relief to the banks.

With respect to comments on the part of the proposal concerning smaller banks under a holding company with assets of $1 billion of more, the comment letters again split along industry/community group lines. The industry groups stated that a community bank does not cease to be a community bank—with the same concerns about serving its community and about reducing regulatory burden—by becoming part of a larger holding company. Community groups expressed concern that by removing the holding company threshold from the definition of small bank, regulators will not only reduce the number of institutions subject to the large bank test, but also create a potential loophole for large holding companies to exploit when trying to evade CRA compliance. That is, this change raises the possibility, in the view of community groups, that large holding companies will reform their banking subsidiaries as a series of local ''small banks'' to avoid the investment and service tests. Industry commenters stated, in response, that they were unaware of any institutions that choose their form of corporate organization in order to minimize their CRA compliance burden.

Discussion

Small Bank Definition

Under the current CRA regulations, an institution is deemed ''large'' in a given year if, at the end of both of the previous two years, it had assets of $250 million or more, or if it is affiliated with a holding company with total bank or thrift assets of $1 billion or more.

The large retail institution test is comprised of the lending, investment, and service tests. The most heavily weighted part of that test is the lending test, under which the agencies consider the number and amount of loans originated or purchased by the institution in its assessment area; the geographic distribution of its lending; characteristics, such as income level of its borrowers; its community development lending; and its use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies in a safe and sound manner. Large institutions must collect and report data on small business loans, small farm loans, and community development loans, and may, on an optional basis, collect data on consumer loans.

Under the investment test, the agencies consider the dollar amount of qualified investments, their innovativeness or complexity, their responsiveness to credit and community development needs, and the degree to which they are not routinely provided by private investors.

Under the service test, the agencies consider an institution's branch distribution among geographies of different income levels; its record of opening and closing branches, particularly in low- and moderate-income geographies; the availability and effectiveness of alternative systems for delivering retail banking services in low- and moderate-income geographies and to low- and moderate-income individuals; and the range of services provided in geographies of different income levels, as well as the extent to which those services are tailored to meet the needs of those geographies. The agencies also consider the extent to which the institution provides community development services and the innovativeness and responsiveness of those services.

In contrast, the performance of a small bank—an institution currently with assets under $250 million and not part of a holding company with bank and thrift assets over $1 billion—is evaluated under a streamlined test that focuses primarily on lending. The test considers the institution's loan-to-deposit ratio; the percentage of loans in its assessment areas; its record of lending to borrowers of different income levels and businesses and farms of different sizes; the geographic distribution of its loans; and its record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment areas.

As we stated in the February 2004 NPR:

> The [CRA] regulations distinguish between small and large institutions for several important reasons. Institutions' capacities to undertake certain activities, and the burdens of those activities, vary by asset size, sometimes disproportionately. Examples of such activities include identifying, underwriting, and funding qualified equity investments, and collecting and reporting loan data. The case for imposing certain burdens is sometimes more compelling with larger institutions than with smaller ones. For instance, the number and volume of loans and services generally tend to increase with asset size, as do the number of people and areas served, although the amount and quality of an institution's service to its community certainly is not always directly related to its size. Furthermore, evaluation methods appropriately differ depending on institution size. Commenters from various viewpoints tended to agree that the regulations should draw a line between small and large institutions for at least some purposes. They differed, however, on where the line should be drawn. 69 FR 5729.

We have carefully reviewed the comment letters. The FDIC considered a range of options raised by the comments. For example, we considered raising the small bank threshold to banks with assets up to $500 million with no community development test. We also considered raising the small bank threshold to $1 billion, with no additional changes. We also considered making no changes to the small bank definition. We further considered various approaches to address concerns raised about the needs of rural and other underserved communities. After this analysis, the FDIC has decided to issue

a new proposal, rather than issue a final rule at this time. We now propose amending the ''small bank'' definition to $1 billion.

In addition, we are proposing to add a mandatory community development criterion for those small banks with assets over $250 million and we are proposing to amend the community development definition to emphasize the importance of investments and services in rural communities. We seek comment on whether the proposal, as further modified below, would better enable those banks to focus their resources—both time and financial—on community-based lending activities and on more selective investment and service activities. We also invite public comment on whether other approaches would be more appropriate. For example, is there another appropriate threshold to use when defining small banks?

Community Development Criterion

The consideration of community development activities has always been part of the CRA evaluation process, regardless of size of the institution. Appendix A, section (d)(2), to 12 CFR part 345 now states that if a small bank requests consideration for an ''Outstanding'' rating, the FDIC will consider, in addition to determining whether the small bank exceeds each of the standards required to obtain a ''satisfactory'' rating, the extent to which it makes qualified investments and provides branches and other services that enhance credit availability in its assessment area(s). This is further explained in the Interagency Questions and Answers Regarding Community Reinvestment (''Interagency Questions and Answers''). 66 FR 36620 (July 12, 2001). We are, however, concerned that smaller institutions that are presently covered by the large bank tests have noted difficulties with making qualified investments including the ability to compete with larger banks for investment opportunities and maintaining staff and resources to do so.

In light of these considerations, we propose to add a mandatory community development performance criterion for banks with assets greater than $250 million and up to $1 billion as an additional component of the streamlined small bank standards. This community development criterion would be evaluated along with the current streamlined criterion applicable to all small banks.

For those banks covered by this community development criterion, the FDIC will assess a bank's record of helping to meet the needs of its assessment area(s) through a combination of its community development lending, qualified investments, or community development services. Such banks will be required to engage in activities that meet credit needs in their assessment area(s), but may balance their community development lending, investing and service activities based on the opportunities in the market and the banks' own strategic strengths. For example, a bank with assets greater than $250 million and up to $1 billion may perform well under the community development criterion by engaging in one or more as opposed to all of the activities.

We request comment on whether instead of adding a community development criterion for small banks between $250 million and $1 billion as the proposal would do, should the FDIC instead apply a separate community development test in addition to existing streamlined performance criteria applicable to small banks to evaluate community development activities of such banks? If such a test were to be imposed, how should these activities be weighted in assigning a performance rating? How should the ratings of both the existing streamlined performance criteria and the community development test be weighted in assigning an overall performance rating?

Community development activities for banks with assets greater than $250 million and up to $1 billion will be evaluated by the FDIC when assigning a CRA rating. Appendix A to the CRA regulations will continue to reflect that for a small bank to receive an ''Outstanding'' CRA rating, the FDIC will consider the extent to which that bank exceeds each of the ''Satisfactory'' performance standards, now including an explicit community development criterion applicable to banks with assets greater than $250 million and up to $1 billion.

Banks with assets under $250 million can attain an ''Outstanding'' rating in two ways. First, when the bank's performance materially exceeds satisfactory standards for each of the five lending criteria. (This proposal does not change the existing regulation, *see:* Interagency Questions and Answers § .26(b)-1.) Or second, when the bank has satisfactory performance standards for each of the five lending criteria and, in addition, requests consideration of community development loans, qualified investments or services and those are found to warrant an Outstanding rating. (This provision reflects a conforming change to parallel the new community development criterion for banks over $250 million to $1 billion which permits a bank to choose among community development activities.)

Community Development in Rural Communities

As stated above, many community organization commenters expressed concern about investments and service to rural communities. To address this concern, we propose amending the definition of ''community development,'' which now focuses on activities that benefit low- and moderate-income individuals. As proposed, ''community development'' activity could benefit either low- and moderate-income individuals or individuals who reside in rural areas.[2] We seek comment on whether our proposed change to the community development definition encompasses the full range of community development activity that benefits rural areas. We also ask for comment on whether a definition of ''rural'' would be helpful, and if so, how that term should be defined.

Conclusion

In sum, the proposed changes would not diminish in any way the obligation of all insured depository institutions subject to CRA to help meet the credit needs of their communities. Rather, the proposal is intended to improve the effectiveness of CRA evaluations by permitting banks to focus on community development activities based on the opportunities in the market and the needs of the community, including low- and moderate-income areas; address particular concerns relating to investments and services provided to rural communities; and update the regulation to take account of economic changes in the industry.

The FDIC seeks comment on all aspects of the proposal. The FDIC solicits comments on whether the small bank definition threshold of less than $1 billion is appropriate. Should a community development criterion be included that offers choices to banks or not? The FDIC also seeks comment on whether other approaches would better improve the effectiveness of CRA evaluations for small institutions, while reducing unwarranted burden.

[2] This change will impact the community development test currently in the regulation for wholesale or limited purpose banks. We seek comment on whether this impact is significant.

Regulatory Analysis

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This proposal would result in a change in the paperwork burden under OMB-approved information collection 3064–0092. The change in the collection of information contained in this proposal has, therefore, been submitted to OMB for review.

Written comments on the collection of information should be sent to Mark Menchik, FDIC desk officer: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Washington, D.C. 20503. Copies of comments should also be addressed to: Leneta G. Gregorie, Legal Division, Room MB–3082, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to the title of the proposed collection. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m., Attention: Comments/Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. For further information on the Paperwork Reduction Act aspect of this proposal, contact Leneta Gregorie at the above address.

Comment is solicited on:

1. Whether the collection of information is necessary for the proper performance of FDIC functions, including whether the information will have practical utility;

2. The accuracy of our estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected;

4. Ways to minimize the burden of the information collection 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, for example, permitting electronic submission of responses; and

5. Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Title of the collection: Community Reinvestment—12 CFR 345.

Frequency of Response: Annual.

Affected Public: State nonmember banks.

Abstract: This Paperwork Reduction Act section estimates the burden that would be associated with the regulations if the agency were to change the definition of ''small bank as proposed, that is, increase the asset threshold from $250 million to $1 billion and eliminate any consideration of holding-company size. The proposed change, if adopted, would make ''small'' approximately 875 FDIC-regulated institutions that do not now have that status. That estimate is based on data for FDIC-regulated institutions that filed Call or Thrift Financial Reports on June 30, 2004. Those data also underlie the estimated paperwork burden that would be associated with the regulations if the proposals were adopted by the FDIC. The proposed change to amend the small bank performance standards to incorporate a community development test would have no impact on paperwork burden because the evaluation is based on information prepared by examiners.

Estimated Paperwork Burden under the Proposal:

Number of Respondents: 5,296.

Estimated Time Per Response: Small business and small farm loan register, 219 hours; Consumer loan data, 326 hours; Other loan data, 25 hours; Assessment area delineation, 2 hours; Small business and small farm loan data, 8 hours; Community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; Data on lending by a consortium or third party, 17 hours; Affiliated lending data, 38 hours; Request for designation as a wholesale or limited purpose bank, 4 hours; and Public file, 10 hours.

Total Estimated Annual Burden: 193,975 hours. (The estimated burden hours under the current proposal represents a decrease in burden from the February 2004 proposal of 137,383 hours.)

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that since the proposal would reduce burden and would not raise costs for small institutions, this proposal will not have a significant economic impact on a substantial number of small entities. This proposal does not impose any additional paperwork or regulatory reporting requirements. The proposal would increase the overall number of small banks that are permitted to avoid data collection requirements in 12 CFR part 345. Accordingly, a regulatory flexibility analysis is not required.

The Treasury and General Government Appropriations Act, 1999—Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this proposal will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681.

FDIC Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the FDIC to use ''plain language'' in all proposed and final rules published after January 1, 2000. The FDIC invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposed text easier to understand.

List of Subjects in 12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

1. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

2. Revise § 345.12 to read as follows:

a. Revise paragraphs (g)(1), (g)(2), and (g)(4); and

b. Revise paragraph (u) to read as follows:

§ 345.12 Definitions.

* * * * *

(g) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low-or moderate-income individuals or for individuals in rural areas;

(2) Community services targeted to low-or moderate-income individuals or to individuals in rural areas;

* * * * *

(4) Activities that revitalize or stabilize low-or moderate-income geographies or rural areas.

* * * * *

(u) *Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had total assets up to $1 billion.

* * * * *

3. Revise § 345.26 to read as follows:

a. Section 345.26(a)(4) is amended to remove the word ''and'' at the end;

b. Section 345.26(a)(5) is amended by removing the period and by adding ''; and'' at the end of the paragraph;

c. A new § 345.26(a)(6) is added;

d. Redesignate paragraph (b) as paragraph (c); and

e. Add new paragraph (b) to read as follows:

§ 345.26. Small bank performance standards.

(a) * * *

(6) For small banks with assets greater than $250 million and up to $1 billion, the bank's record of community development activities, as discussed in subpart (b) of this part, through its community development lending, qualified investments, or community development services.

(b) *Community development criterion for certain small banks.* The FDIC also evaluates the community development performance of a small bank with assets greater than $250 million and up to $1 billion pursuant to the following criteria:

(1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the bank, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) The bank's responsiveness to credit and community development needs.

(4) *Indirect activities.* At a bank's option, the FDIC will consider in its community development performance assessment:

(i) Qualified investments or community development services provided by an affiliate of the bank, if the investments or services are not claimed by any other institution; and

(ii) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 345.22(c) and (d).

* * * * *

4. Appendix A to Part 345 is amended to read as follows:

a. (d)(1)(iv) is amended to remove the word ''and'' at the end;

b. (d)(1)(v) is amended to remove the period and add ''; and'' at the end;

c. A new (d)(1)(vi) is added; and

d. Revise paragraph (d)(2) to read as follows:

Appendix A to Part 345—Ratings

* * * * *

(d) * * *

(1) * * *

(vi) For banks with assets greater than $250 million and up to $1 billion, adequate responsiveness to community development needs through community development lending qualified investments or community development services in its assessment area(s) or that benefit a broader statewide or regional area that includes the bank's assessment area(s).

(2) *Eligibility for an outstanding rating.* (i) A bank that meets each of the standards for a ''satisfactory'' rating under this paragraph (including the community development criterion for a bank with assets greater than $250 million and up to $1 billion), and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the FDIC considers the extent to which the bank exceeds each of the performance standards for a ''satisfactory'' rating.

(ii) A bank with assets up to $250 million that meets performance standards for a satisfactory rating also may request consideration for an ''outstanding rating'' based on consideration of community development lending, qualified investments, or services that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

* * * * *

Dated at Washington, DC, this 16th day of August, 2004.

By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–19021 Filed 8–19–04; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18579; Directorate Identifier 2004–CE–19–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–7 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Pilatus Aircraft Ltd. (Pilatus) Model PC–7 airplanes with any Lear Romec RR53710B type or Lear Romec RR53710K fuel booster pump (Pilatus part number 968.84.11.401; 968.84.11.403; or 968.84.11.404) installed. This proposed AD would require you to check the airplane logbook to determine whether any installed fuel booster pump has been modified with spiral wrap to protect the wire leads and has the suffix letter ''B'' added to the serial number of the fuel booster pump identification plate. If any installed fuel booster pump has not been modified, you are required to inspect any installed fuel booster pump wire lead for defects; if defects are found, replace the fuel booster pump with a modified fuel booster pump with spiral wrap that protects the wire leads; or if no defects are found, install spiral wrap to protect any wire leads and adding the suffix letter ''B'' to the serial number of the fuel booster pump identification plate. The pilot is allowed to do the logbook check. If the pilot can positively determine that the fuel booster pump wire leads with spiral wrap are installed following the service information and that the suffix letter ''B'' is included in the serial number of the fuel booster pump identification plate, no further action is required. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this proposed AD to detect and correct any defects in the leads of any fuel booster pump, which could result in electrical arcing. This failure could lead to a fire or explosion in the fuel tank.

DATES: We must receive any comments on this proposed AD by September 22, 2004.

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

• *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

• *Fax:* 1–202–493–2251.

• *Hand Delivery:* 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 get the service information identified in this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6208; facsimile: +41 41 619 7311; e-mail: *SupportPC12@pilaltus-aircraft.com* or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040.

You may view the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2004–18579; Directorate Identifier. 2004–CE–19–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). This is docket number FAA–2004–18579. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

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

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov.* The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Model PC–7 airplanes. The FOCA reports that there have been 11 reports of damaged fuel boost pump wire leads from 9 Model PC–12 airplanes that have a similar type design. Further, the FOCA reports that it possible that the wire leads to the left and right fuel pumps are damaged. This could possibly cause electrical arcs from the leads in an air/fuel mixture.

What is the potential impact if FAA took no action? Any electrical arcing could lead to a fire or explosion in the fuel tank.

Is there service information that applies to this subject? Pilatus has issued the following service information:

—Pilatus PC–7 Service Bulletin No. 28–009, dated October 6, 2003;

—Pilatus PC–7 Maintenance Manual No. 12–10–01, dated November 30, 2003; and

—Pilatus PC–7 Maintenance Manual No. 28–20–03, dated November 30, 2003.

What are the provisions of this service information? The service information includes procedures for:

Pilatus PC–7 Service Bulletin No. 28–009, dated October 6, 2003:

—inspecting any installed Lear Romec RR53710B type or Lear Romec RR53710K fuel booster pump (Pilatus part number (P/N) 968.84.11.401; 968.84.11.403; or 968.84.11.404) wire leads for any defects;

—if any defects in any wire lead of the installed fuel booster pump is found, replacing the fuel booster pump with a modified fuel booster pump (serial number with suffix letter ''B'') that has the wire leads protected with spiral wrap;

—if no defects are found, installing spiral wrap to protect any wire leads and adding the suffix letter ''B'' to the serial number of the fuel booster pump identification plate; and

—inspecting for any defects of and modifying any spare fuel booster pump (P/N 968.84.11.401; 968.84.11.403; or 968.84.11.404) before installation.

Pilatus PC–7 Maintenance Manual No. 12–10–01, dated November 30, 2003:

—servicing the fuel system.

—*Pilatus PC–7 Maintenance Manual No.* 28–20–03, dated November 30, 2003:

—removing and installing the fuel booster pump.

What action did the FOCA take? The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB–2004–210, issue dated June 11, 2004, to ensure the continued airworthiness of these airplanes in Switzerland.

Did the FOCA inform the United States under the bilateral airworthiness agreement? These certain Pilatus Model PC–7 airplanes are manufactured in Switzerland and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the FOCA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the FOCA's findings, reviewed all available information, and determined that AD action is necessary

for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other certain Pilatus Model PC–7 airplanes of the same type design that are registered in the United States, we are proposing AD action to detect and correct any defects in the leads of any fuel booster pump, which could result in electrical arcing. This failure could lead to a fire or explosion in the fuel tank.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

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

Costs of Compliance

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

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do this proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $65 per hour = $65	Not applicable	$65.	$65 × 10 = $650.

We estimate the following costs to do any necessary replacement of any fuel boost pump, including the installation of any wire wrap, that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this installation:

Labor cost	Parts cost	Total cost total per airplane
5 workhours × $65 per hour = $325	$2,800 for each fuel booster pump	$2,800 + $325 = $3,125 for each fuel booster pump installation.

Regulatory Findings

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

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2004–18579; Directorate Identifier 2004–CE–19–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pilatus Aircraft Ltd.: Docket No. FAA–2004–18579; Directorate Identifier 2004–CE–19–AD

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

(a) We must receive comments on this proposed airworthiness directive (AD) by September 22, 2004.

What Other ADs Are Affected By This Action?

(b) None.

What Airplanes Are Affected by This AD?

This AD affects Model PC–7 airplanes, serial numbers 101 through 618, that are:

(1) equipped with Lear Romec RR53710B type or Lear Romec RR53710K fuel booster pump, Pilatus part number (P/N) 968.84.11.401; 968.84.11.403; or 968.84.11.404; and

(2) certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified in this AD are intended to detect and correct any defects in the leads of any fuel booster pump, which could result in electrical arcing. This failure could lead to a fire or explosion in the fuel tank.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Check the airplane logbook to ensure that any fuel booster pump (part number (P/N) 968.84.11.401; 968.84.11.403; or 968.84.11.404) has been modified with spiral wrap to protect the wire leads and has the suffix letter "B" added to the serial number of the fuel booster pump identification plate as required by paragraph (e)(5) of this AD.	Within 50 hours' time-in-service after the effective date of this AD, unless already done.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check.
(2) If you can positively determine that any fuel booster pump (P/N 968.84.11.401; 968.84.11.403; or 968.84.11.404) has been modified following the Accomplishment Instructions—Aircraft section in Pilatus PC–7 Service Bulletin No. 28–009, dated October 6, 2003, and has the suffix letter "B" added to the serial number of the fuel booster pump identification plate as required by paragraph (e)(5) of this AD, then no further action is required.	Not Applicable	Not Applicable.
(3) Inspect any fuel booster pump (P/N 968.84.11.401; 968.84.11.403; or 968.84.11.404) leads for any defects.	Within 50 hours' time-in-service after the effective date of this AD, unless already done.	Follow the Accomplishment Instructions—Aircraft section in Pilatus PC–7 Service Bulletin No. 28–009, dated October 6, 2003. This subject is also addressed in the Pilatus PC–7 Airplane Maintenance Manual.
(4) If any defect is found during the inspection required by paragraph (e)(1) of this AD, replace the fuel booster pump.	Before further flight after the inspection required by paragraph (e)(1) of this AD in which any defect is found.	Follow the Accomplishment Instructions—Aircraft section in Pilatus PC–7 Service Bulletin No. 28–009, dated October 6, 2003. This subject is also addressed in the Pilatus PC–7 Airplane Maintenance Manual.
(5) If no defects are found during the inspection required by paragraph (e)(1) of this AD, modify any fuel booster pump (P/N 968.84.11.401; 968.84.11.403; or 968.84.11.404) by installing the lead protection by using a spiral wrap. After doing the modification, re-identify the fuel booster pump (P/N 968.84.11.401; 968.84.11.403; or 968.84.11.404) by adding the suffix letter "B" to the serial number of the fuel booster pump identification plate.	Before further flight after inspection required by paragraph (e)(1) of this AD where no defect is found.	Follow the the Accomplishment Instructions—Aircraft section in Pilatus PC–7 Service Bulletin No. 28–009, dated October 6, 2003. This subject is also addressed in the Pilatus PC–7 Airplane Maintenance Manual.
(6) Do not install any fuel booster pump (P/N 968.84.11.401; 968.84.11.403; or 968.84.11.404) that has not been modified and identified with the suffix letter "B" to the serial number of the fuel booster pump identification plate.	As of the effective date of this AD	Follow the Accomplishment Instructions—Spares section in Pilatus PC–7 Service Bulletin No. 28–009, dated October 6, 2003.

Note 1: Incorporate Pilatus PC–7 Maintenance Manual No. 28–20–03, dated November 30, 2003, and Pilatus PC–7 Maintenance Manual No. 12–10–01, dated November 30, 2003, in the appropriate section of the airplane maintenance manual.

Note 2: Wiring defects are addressed in paragraph 11–97 in FAA Advisory Circular (AC) 43.13–1B.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

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

(g) You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6208; facsimile: +41 41 619 7311; e-mail: *SupportPC12@pilaltus-aircraft.com* or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view the AD docket at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*.

Is There Other Information That Relates to This Subject?

(h) Swiss AD Number HB–2004–210, issue dated June 11, 2004, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on August 13, 2004.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–19158 Filed 8–19–04; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release Nos. 34–50213; IA–2278; File No. S7–25–99]

RIN 3235–AH78

Certain Broker-Dealers Deemed Not To Be Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Securities and Exchange Commission is reopening the period for public comment on a rule proposal under the Investment Advisers Act of 1940 that would address the application of the Advisers Act to brokers offering certain full service brokerage services (including advice) for an asset-based fee instead of traditional commissions, mark-ups, and mark-downs, and that would address electronic trading for reduced brokerage commissions.

DATES: Comments should be received on or before September 22, 2004.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. S7–25–99 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. S7–25–99. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post comments on the Commission's Internet Web site (*http://www.sec.gov*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Robert L. Tuleya, Attorney-Adviser, or Nancy M. Morris, Attorney-Fellow, (202) 942–0719, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''SEC'' or ''Commission'') is reopening the period for public comment on proposed rule 202(a)(11)–1 [17 CFR 275.202(a)(11)–1] and a proposed amendment to the instructions for Schedule I of Form ADV [17 CFR 279.1], both under the Investment Advisers Act of 1940. These amendments were proposed on November 4, 1999,[1] and the comment period initially closed on January 14, 2000. While the Commission received substantial commentary on the proposal during that period,[2] a substantial number of comments have been received by the Commission since that date. For example, in the sixty days between June 1 and August 1, 2004, we received more than 45 comment letters. One of these commenters, The Financial Planning Association,[3] raised some new issues in its comment letter, and has also filed a petition for judicial review of the proposal.[4] In view of the significant continuing public interest in the proposal and in order to provide all persons who are interested in this matter a current opportunity to comment, we believe that it is appropriate to reopen the comment period before we take action on the proposal.

We invite additional comment on the proposal, the issues raised in the proposing release, and on any other matters that may have an effect on the proposal. Do current fee-based programs more closely align the interests of investors with those of brokerage firms and their registered representatives than do traditional commission-based services? If the Commission determines not to adopt this rule as proposed, what would be the practical impact on broker-dealers? Should we require broker-dealers who would seek to rely on the rule nevertheless to register if they market fee-based accounts based on the quality of investment advice provided? For example, should brokers be precluded from using certain terms like ''investment advice'' and ''financial planning'' in advertising these services, or is prominent disclosure that an account is a brokerage account sufficient to alert an investor to the nature of the account?

In light of the time that has elapsed since we proposed the rule, we desire to proceed as expeditiously as we reasonably can to complete this proceeding. Accordingly, we will extend the comment period until September 22, 2004, and we currently intend to reach a final decision on the proposal by December 31, 2004.

Dated: August 18, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–19258 Filed 8–18–04; 2:16 pm]

BILLING CODE 8010–01–P

[1] Certain Broker-Dealers Deemed Not To Be Investment Advisers, Investment Advisers Act Release No. 1845 (Nov. 4, 1999) [64 FR 61226 (Nov. 10, 1999)].

[2] Many of the comments received on the proposal are posted on the Commission's Web site at (*http://www.sec.gov*). All comments received are available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

[3] Letter from Duane R. Thompson, Group Director, Advocacy, The Financial Planning Association to Jonathan G. Katz, Secretary, SEC (June 21, 2004), File No. S7–25–99.

[4] *Financial Planning Association* v. *SEC*, No. 04–1242 (DC Cir.) (case docketed on July 20, 2004).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 772

[FHWA Docket No. FHWA–2004–18309]

RIN 2125–AF03

Procedures for Abatement of Highway Traffic Noise and Construction Noise

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This document proposes to amend the FHWA regulation that specifies the traffic noise prediction method to be used in highway traffic noise analyses. This proposed revision would require the use of the FHWA Traffic Noise Model (FHWA TNM) or any other model determined by the FHWA to be consistent with the methodology of the FHWA TNM. The FHWA also proposes to update the specific reference to acceptable highway traffic noise prediction methodology and remove references to a noise measurement report and vehicle noise emission levels that no longer need to be included in the regulation. Finally, the FHWA proposes to make four ministerial corrections to the section on Federal participation.

DATES: Comments must be received by October 19, 2004.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit electronically at *http://dmses.dot.gov/submit* or fax comments to (202) 493–2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov*. All comments must include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Robert Armstrong, Office of Natural and Human Environment, HEPN, (202) 366–2073, or Mr. Robert Black, Office of the Chief Counsel, HCC–31, (202) 366–1359, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit*. Acceptable formats include: MS Word, MS Word for Mac, Rich Text File (RTF), American Standard Code for Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara*.

Background

The FHWA noise regulations were developed as a result of the Federal-Aid Highway Act of 1970 (Pub. L. 91–605, 84 Stat. 1713) and apply to highway construction projects where a State department of transportation has requested Federal funding for participation in the project. The FHWA noise regulations, found at 23 CFR part 772, require the State DOT to determine if there will be traffic noise impacts in areas adjacent to federally-aided highways when a project is proposed for the construction of a highway on a new location or the reconstruction of an existing highway to either significantly change the horizontal or vertical alignment or increase the number of through-traffic lanes.

Analysts must use a highway traffic noise prediction model to calculate future traffic noise levels and determine traffic noise impacts. The FHWA developed its first prediction model described in ''FHWA Highway Traffic Noise Prediction Model'' (Report No. FHWA–RD–77–108), December 1978.[1]

To incorporate over two decades of improvements in the state-of-the-art of predicting highway traffic noise, as well as continued advancements in computer technology, the FHWA, with assistance from the Volpe National Transportation Systems Center in Cambridge, Massachusetts, developed a new state-of-the-art highway traffic noise prediction model in 1998, ''FHWA Traffic Noise Model,'' Version 1.0 (FHWA TNM).[2] This model bases its calculations on totally new acoustical prediction algorithms as well as newly measured vehicle emission levels for automobiles, medium trucks, heavy trucks, buses and motorcycles.

The Volpe Center, using funds from the FHWA and 25 State departments of transportation, directed and assisted the development of the FHWA TNM to accurately analyze the extremely wide range of frequencies found in highway traffic noise. These include frequencies that typically range from as low as 63 Hertz (two octaves below Middle ''C'' on a piano) to as high as 8,000 Hertz (higher than any note on a piano and usually inaudible to the human ear). The FHWA TNM also allows noise analysts to predict noise for both constant-flow and interrupted-flow traffic and enables them to accurately predict the results of multiple noise barriers, as well as the effects of vegetation and rows of buildings along highways.

The FHWA originally released the FHWA TNM, Version 1.0, on March 30, 1998. Since then, the FHWA has made improvements that resulted in six additional releases—v1.0a, v1.0b, v1.1, v2.0, and v2.1, and v2.5. The FHWA released Version 2.5 of the model on April 14, 2004. The model has been phased in since its original release and will now replace the earlier model distributed in 1978.

As part of the initial establishment of the FHWA technical procedures for the analysis of highway traffic noise, *i.e.*, traffic noise measurement and prediction methodologies, the FHWA's noise regulation included references to ''Sound Procedures for Measuring Highway Noise: Final Report'' [3] and to vehicle emission levels. This was done to aid in everyone's knowledge and understanding of the new technology of highway traffic noise prediction. However, since this technology has now been well established and documented for more than two decades, the FHWA noise regulation no longer needs to include any reference to a measurement report or to vehicle emission levels. Therefore, the FHWA proposes to remove these references from the regulation.

Proposed Changes

The FHWA proposes to update the specific reference in the regulation to acceptable highway traffic noise prediction methodology and to remove references to a noise measurement report and vehicle noise emission levels. Additionally, the FHWA proposes to revise the regulation to make four ministerial corrections.

In § 772.17(a), we propose to require the use of the FHWA Traffic Noise Model (FHWA TNM), which is described in ''FHWA Traffic Noise Model'' Report No. FHWA–PD–96–010,[4] including Revision No. 1, dated April 14, 2004, or any other model determined by the FHWA to be consistent with the methodology of the FHWA TNM. We intend to incorporate this report by reference into the

[1] A printed copy of ''FHWA Highway Traffic Noise Prediction Model'' (Report No. FHWA–RD–77–108), December 1978, is available on the docket.

[2] A printed copy of the ''FHWA Traffic Noise Model Technical Manual'' (Report No. FHWA–PD–96–010), February 1998, is available on the docket.

[3] A printed copy of ''Sound Procedures for Measuring Highway Noise: Final Report'' (Report No. FHWA–DP–45–1R), August 1981, is available on the docket.

[4] ''FHWA Traffic Noise Model'' (Report No. FHWA–PD–96–010), February 1998, is available for inspection and copying at the FHWA Headquarters Office, located at 400 Seventh Street, SW., Washington, DC 20590, as prescribed at 49 CFR part 7.

regulation. We also propose to remove all references to previous traffic noise prediction methodology, vehicle noise emission levels, and a noise measurement report.

In § 772.13(c), we propose to remove the words ''except that Interstate construction funds may only participate in Type I projects'' because Interstate construction funds no longer exist. These funds were specifically authorized by the Congress for the Interstate construction program and have been fully expended.

In § 772.13(c)(1), we propose to change ''exclusive land designations'' to ''exclusive lane designations'' to correct an earlier error where the word ''land'' appeared when it should have been the word ''lane.''

In § 772.13(c)(4), we propose to remove ''Interstate construction funds may not participate in landscaping,'' since Interstate construction funds no longer exist.

Finally, in § 772.13(d), the FHWA proposes to change ''Regional Federal Highway Administrator'' to ''the FHWA.'' State departments of transportation should submit their alternate noise abatement measures to the FHWA Division Administrator for approval.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined that this proposed rule would not be a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures.

The proposed amendment revises requirements for traffic noise prediction on Federal-aid highway projects to be consistent with the current state-of-the-art technology for traffic noise prediction. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed rule on small entities and anticipates that this action would not have a significant economic impact on a substantial number of small entities. The proposed amendment addresses traffic noise prediction on certain State highway projects. As such, it affects only States and States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the RFA does not apply, and the FHWA certifies that the proposed action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This NPRM would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The actions proposed in this NPRM would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120.7 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the affects on State, local, and tribal governments and the private sector. Additionally, the definition of ''Federal Mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this proposed action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this proposed rule directly preempts any State law or regulation or affects the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

National Environmental Policy Act

The FHWA has also analyzed this proposed action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and anticipates that this action would not have any effect on the quality of the human and natural environment, since it proposes to update the specific reference to acceptable highway traffic noise prediction methodology and remove unneeded references to a specific noise measurement report and vehicle noise emission levels.

Paperwork Reduction Act

This proposal contains no collection of information requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that this proposed action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. This proposed rulemaking primarily applies to noise prediction on State highway projects and would not impose any direct compliance requirements on Indian tribal governments and will not have any economic or other impacts on the viability of Indian tribes. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. We have determined that this proposed action would not be a significant energy action under that order because any action contemplated would not be a significant regulatory action under Executive Order 12866 and would not be likely to have a significant adverse effect on the

supply, distribution, or use of energy. Therefore, the FHWA certifies that a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action will not cause an environmental risk to health or safety that may disproportionately affect children.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 772

Highways and roads, Noise control.

Issued on: August 11, 2004.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend part 772 of title 23, Code of Federal Regulations, as follows:

PART 772—PROCEDURES FOR ABATEMENT OF HIGHWAY TRAFFIC NOISE AND CONSTRUCTION NOISE

1. The authority citation for part 772 continues to read as follows:

Authority: 23 U.S.C. 109(h) and (i); 42 U.S.C. 4331, 4332; sec. 339(b), Pub. L. 104–59, 109 Stat. 568, 605; 49 CFR 1.48(b).

2. In § 772.13 revise paragraphs (c) introductory text, (c)(1), (c)(4), and (d) to read as follows:

§ 772.13 Federal participation.

* * * * *

(c) The noise abatement measures listed below may be incorporated in Type I and Type II projects to reduce traffic noise impacts. The costs of such measures may be included in Federal-aid participating project costs with the Federal share being the same as that for the system on which the project is located.

(1) Traffic management measures (*e.g.*, traffic control devices and signing for prohibition of certain vehicle types, time-use restrictions for certain vehicle types, modified speed limits, and exclusive lane designations).

* * * * *

(4) Construction of noise barriers (including landscaping for aesthetic purposes) whether within or outside the highway right-of-way.

* * * * *

(d) There may be situations where severe traffic noise impacts exist or are expected, and the abatement measures listed above are physically infeasible or economically unreasonable. In these instances, noise abatement measures other than those listed in paragraph (c) of this section may be proposed for Types I and II projects by the highway agency and approved by the FHWA on a case-by-case basis when the conditions of paragraph (a) of this section have been met.

3. Revise § 772.17(a) to read as follows:

§ 772.17 Traffic noise prediction.

(a) Any analysis required by this subpart must use the FHWA Traffic Noise Model (FHWA TNM), which is described in ''FHWA Traffic Noise Model'' Report No. FHWA–PD–96–010,[5] including Revision No. 1, dated April 14, 2004, or any other model determined by the FHWA to be consistent with the methodology of the FHWA TNM. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the National Archives and Record 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*. It is available for copying and inspection at the Federal Highway Administration, 400 Seventh Street, SW., Room 3240, Washington, DC 20590, as provided in 49 CFR part 7.

* * * * *

[FR Doc. 04–18850 Filed 8–19–04; 8:45 am]

BILLING CODE 4910–22–P

[5] ''FHWA Traffic Noise Model'' (Report No. FHWA–PD–96–010), February 1998, is available for inspection and copying at the FHWA Headquarters Office, located at 400 Seventh Street, SW., Washington, DC 20590, as prescribed at 49 CFR part 7.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7802–7]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to partially delete the Davenport and Flagstaff Smelters Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a notice of intent to partially delete the Davenport and Flagstaff Smelters Superfund Site (Site), located in Salt Lake County, Utah, from the National Priorities List (NPL) and requests public comments on this notice of intent. Specifically, EPA intends to delete 23 residential properties within the Site. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)of 1980 as amended. The EPA and the state of Utah, through the Utah Department of Environmental Quality, have determined that all appropriate response actions under CERCLA have been completed for the properties subject to the partial deletion. However, this partial deletion does not preclude future actions under Superfund.

In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a direct final notice of partial deletion of the Davenport and Flagstaff Smelters Superfund Site without prior notice of intent to partially delete because we view this as a non-controversial revision and anticipate no adverse comment. We have explained our reasons for this partial deletion in the preamble to the

direct final partial deletion. If we receive no adverse comment(s) on this notice of intent to partially delete or the direct final notice of partial deletion, we will not take further action on this notice of intent to partially delete. If we receive adverse comment(s), we will withdraw the direct final notice of partial deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final partial deletion notice based on this notice of intent to partially delete. We will not institute a second comment period on this notice of intent to partially delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of partial deletion that is located in the ''Rules and Regulations'' section of this **Federal Register**.

DATES: Comments concerning this notice must be received by September 20, 2004.

ADDRESSES: Written comments should be addressed to: Britta Copt, Community Involvement Coordinator (80CPI), U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6229, *copt.britta@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Stanley Christensen, Remedial Project Manager (8EPR–SR), U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6694.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Partial Deletion, which is located in the ''Rules and Regulations'' section of this **Federal Register**.

Information Repositories: Comprehensive information on the Davenport and Flagstaff Smelters Superfund Site as well as information specific to this proposed partial deletion is available for review at the following addresses:

U.S. Environmental Protection Agency Region 8 Records Center, 999 18th St., Suite 300, Denver, CO 80202 (303) 312–6473
Hours: M–F, 8:30 a.m. to 4:30 p.m.
Sandy Branch, Salt Lake County Library, 10100 S. Petunia Way, Sandy, UT 84092, (801) 944–7574
Hours: M–Th, 10 a.m. to 9 p.m.; F–Sat., 10 a.m. to 6 p.m.
Utah Department of Environmental Quality, 168 North 1950 West 1st Floor, Salt Lake City, UT 84116, (801) 536–4400
Hours: M–F, 8 a.m. to 5 p.m.

List of Subjects in 40 CFR Part 300

Environmental Protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR 1987 Comp., p. 193.

Dated: July 28, 2004.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 04–18965 Filed 8–19–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2500; MB Docket No. 04–318, RM–11040]

Radio Broadcasting Services; Culebra, PR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comments on a petition filed by La Gigante Radio Corporation proposing the substitution of Channel 291A for Channel 254A at Culebra, Puerto Rico, as the community's first local aural transmission service. To accommodate the allotment, petitioner also proposes the deletion of vacant Channel 291B at Vieques, Puerto Rico. Channel 291A can be allotted at Culebra in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.2 kilometers (1.4 miles) northwest at petitioner's presently authorized STA site. The coordinates for Channel 291A at Culebra are 18–19–19 North Latitude and 65–17–59 West Longitude. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 291A at Culebra, Puerto Rico.

DATES: Comments must be filed on or before October 4, 2004, reply comments on or before October 19, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Scott C. Cinnamon, Esq., Law Offices of Scott C. Cinnamon, PLLC, 1090 Vermont Ave., NW., Suite 800, #144, Washington, DC 2005 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 04–318, adopted August 10, 2004, and released August 12, 2004. The full text of this Commission decision 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. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Puerto Rico, is amended by adding Channel 291A and by removing Channel 254A at Culebra; and by removing Vieques, Channel 291B.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–19143 Filed 8–19–04; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 69, No. 161

Friday, August 20, 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

[Doc. No. FV–04–702]

Request for an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget for an extension of the currently approved information collection ''Hass Avocado National Research, Promotion and Consumer Information Program.''

DATES: Comments received by October 19, 2004 will be considered.

ADDITIONAL INFORMATION OR COMMENTS: Contact Ethel Mitchell, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–9915 and (202) 205–2800; *ethel.mitchell@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Hass Avocado National Research, Promotion and Consumer Information Program.

OMB Number: 0581–0197.

Expiration Date of Approval: October 31, 2004.

Type of Request: Extension of a currently approved information collection.

Abstract: This information collection requirement is essential to carry out the intent of the Hass Avocado Research, Promotion, and Consumer Information Act of 2000 (7 U.S.C. 7801–7813). This information collection requires a variety of forms. Such forms may include reports concerning status of information such as producer and importer report; transaction report; exemption from assessment form, and reimbursement form; form and information concerning board nomination and selection and acceptance statement; certification of industry organizations; and recordkeeping requirements. The forms and information covered under this information collection require the minimum information necessary to effectively carry out the requirements of the programs and their use is necessary to fulfill the intent of the applicable authorities. Assessment collection for domestic and imported Hass avocados to conduct research, promotion, industry information, and consumer information needed for the maintenance, expansion, and development of domestic markets for Hass avocados.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: Producers, handlers and importers.

Estimated Number of Respondents: 6,310.

Estimated Number of Responses: 12,903.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 6,134.

This collection is being merged into the Research, Promotion, and Consumer Information Collection 0581–0093. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Ethel Mitchell, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–9915 and (202) 205–2800; *ethel.mitchell@usda.gov.* All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 16, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–19069 Filed 8–19–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses for the 2005 Tariff-Rate Import Quota Year

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the fee to be charged for the 2005 tariff-rate quota (TRQ) year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to tariff-rate quotas set forth in the Harmonized Tariff Schedule of the United States (HTS) will be $200.00 per license.

DATES: Effective January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Michael Hankin, Dairy Import Quota Manager, Import Policies and Programs Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1021 or telephone at (202) 720–9439 or e-mail at *Michael.Hankin@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: The Dairy Import Tariff-Rate Quota Licensing Regulation promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.37 provides for the issuance of licenses to import certain dairy articles that are subject to TRQs set forth in the HTS. Those dairy articles

may only be entered into the United States at the in-quota TRQ tariff-rates by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The use of licenses by the license holder to import dairy articles is monitored by the Dairy Import Quota Manager, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, and the U.S. Customs Service.

The regulation at 7 CFR 6.33(a) provides that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation.

The regulation at 7 CFR 6.33(a) also provides that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be published in the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 2005 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 2004 has been determined to be $518,000 and the estimated number of licenses expected to be issued is 2,580. Of the total cost, $205,000 represents staff and supervisory costs directly related to administering the licensing system for 2004; $50,000 represents the total computer costs to monitor and issue import licenses for 2004; and $263,000 represents other miscellaneous costs, including travel, postage, publications, forms, Internet software development, and ADP system contractors.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 2005 calendar year, in accordance with 7 CFR 6.33, will be $200.00 per license.

Issued at Washington, DC, the 16th day of August, 2004.

Michael Hankin,

Licensing Authority.

[FR Doc. 04–19146 Filed 8–19–04; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Cibola National Forest; New Mexico; Tajique Watershed Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service has initiated the process to prepare an Environmental Impact Statement for the Tajique Watershed Restoration Project on the Cibola National Forest, Mountainair Ranger District. The proposed action would restore vegetation conditions in a southwest pine ecosystem and reduce the fire hazard in the Manzano Mountains by treating approximately 17,000 acres within the watershed. The proposal includes forest thinning and prescribed burns to treat identified stands. The objective is to restore the landscape to historic conditions that are adopted to frequent fire return intervals as well as restore grass and shrub components in the understory and increase vegetation and wildlife diversity. A non-significant forest Plan amendment would be required in order to use new methodology for analyzing visual resources. Several small mountain communities would benefit from the proposed treatments that would create defensible space around homes and other Forest facilities. This proposal is being prepared to meet the intent of the Healthy Forest Restoration Act (2003).

DATES: Comments concerning the scope of the analysis must be received by September 3, 2004. The draft environmental impact statement is expected to be published in October, 2004, and the final environmental impact statement is expected in December 2004.

ADDRESSES: Send written comments to Deborah Walker, NEPA Coordinator; Cibola National Forest; 2113 Osuna Road NE.; Albuquerque, NM 87113 or FAX to 505–346–3901. Copies of the proposed action, project location maps, or the Environmental Impact Statement, when available, may be obtained from the Cibola National Forest; 2113 Osuna Road, NE.; Albuquerque, NM 87113; or from the Mountainair Ranger District; 40 Ranger Station Road (P.O. Box 69); Mountainair, NM 87036, or from the Forest website at *http://www.fs.fed.us/r3/cibola/projects/index.shtml.*

FOR FURTHER INFORMATION CONTACT: For further information, mail correspondence to Deborah Walker, NEPA Coordinator; Cibola National Forest; 2113 Osuna Road, NE.; Albuquerque, NM 87113 or phone 505–346–3888.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the Tajique watershed restoration project is to:

1. Improve watershed health within this portion of the Tajique watershed.
2. Improve forest health condition by allowing fire to resume its natural role in the ecosystem and restore forest conditions to those found prior to fire suppression.
3. Reduce the fire hazard from high to low by reducing stand density and changing stand structure.
4. Provide and maintain functional wildlife habitat.

Proposed Action

On December 3, 2003, Congress passed the Healthy Forest Restoration Act (HFRA) as a means to reduce the threat of destructive wildfires. This project is proposed as a way in which to meet the intent of HFRA and reduce hazardous fuels within this watershed while also reducing the threat of wildfire to the communities of Taljique, Torreon, Sherwood Forest, and Forest Valley. The proposed action was developed in collaboration with many of the stakeholders who are imminently affected by activities within this watershed and who are also most at risk to loss should a catastrophic wildfire occur in the future.

In addition to responding to the concern over wildfire, activities within the Tajique watershed would provide an opportunity for local economic development and encourage financial viability in rural communities that depend on National Forest System lands. The National Fire Plan (2001) and the 10-Year Comprehensive Strategy (2001) placed an emphasis on promoting markets for traditionally under-utilized wood products that could be derived from fuel reduction projects. Thus in order to meet the direction of the National Fire Plan, proposed activities would encourage the development of those markets in local communities and assist in providing economic stability over the next several years.

The Cibola National Forest proposes to implement a restoration project in the Tajique watershed in order to restore forest structure within conifer stands, meadows, and riparian areas to conditions when fire was prevalent across the landscape. Proposed activities would also serve to increase diversity and density of herbaceous and shrub understory vegetation.

The project area covers 17,500 acres, of which approximately 17,000 acres would be treated to meet restoration goals through the use of mechanical thinning and prescribed burns. Vegetation treatments could include removal of excess trees across all size classes, from seedlings to large diameter trees. A combination of commercial harvest, stewardship contracts, service contracts, biomass removal (chipping), commercial fuelwood contracts, and personal use permits would be used to reduce tree density in order to return the watershed to its range of natural variability. Conifers greater than 9 inches diameter at breast height (DBH) may be removed as needed as part of the treatment. Smaller size trees would be removed for fuelwood or chipped for biomass. Prescribed burn treatments would include pile burns, jackpot burns, and broadcast burns to reduce activity generated and existing fuel loads. The existing road system would serve to provide access to the treatment units; however, road maintenance work and an estimate 28 miles of additional temporary roads would be constructed to provide access. Constructed temporary roads would be obliterated once project activities were completed.

Specific resource protection measures as well as Forest standards and guidelines would also be included to meet restoration objectives. A monitoring plan would be developed as part of the treatment plan. The plan would include pre- and post-treatment implementation, effectiveness, and validation monitoring.

Vegetation Treatments

Ponderosa Pine

Treatments would reduce tree density while maintaining a variety of age and size classes that restore historic natural structure. Treatments would mimic predicted historic conditions, thus there would be a variety of tree densities across the landscape. High density stands would retain more trees per acre, fewer openings, and less patchiness while moderate or low density stands would have fewer trees, small openings, and more of an herbaceous component in the understory.

Mixed Conifer

The proposed action would provide for a variety of conifer species in varying densities, size and age classes across the landscape, while maintaining a higher canopy cover in moderate to high density stands. Within MSO protected habitat, no trees greater than 9 inches DBH would be harvested. Within MSO restricted habitat, no trees greater than 24 inches DBH would be harvested.

Piñon Pine/Juniper

Activities within this vegetation type would create stands that resemble historic structures ranging from savannah-like conditions to higher density woodland. Stands would have variable spacing with a patchy character that promotes herbaceous vegetation growth and soil stability. In moderate and low density stands, treatments would retain naturally occurring clumps of trees (2 to 25 per clump) and a variety of size and age classes. High density stands would retain more trees per acre. Individual trees would be scattered across the landscape with irregular spacing between clumps.

Ponderosa Pine/Piñon Pine/Juniper Transition Zones

The proposed action would reduce piñon pine/juniper encroachment and restore ponderosa pine where it historically was dominant or restore woodland conditions to piñon pine/juniper dominated stands.

Riparian Corridors and Meadows

Activities would restore hydrologic functions by removing encroaching conifers, which would raise the water table, increase riparian vegetation, and improve channel stability. Aspen clones would be treated to improve aspen regeneration, growth and vigor.

Other Treatment Areas

Fuelbreaks

Construct 1,100 acres of shaded fuelbreaks using mechanical or manual harvest methods to establish an initial level of fire protection surrounding adjacent communities and along ridgelines.

Northern Goshawk Dispersal Areas

Move stands toward habitat conditions conducive to providing for dispersal post-fledging family areas in Jaral Canon, Canon del Apache, Canon del Tronco Negro, and Canon de la Gallina. Thin from below to create desired stand conditions, and retain large diameter trees and riparian vegetation. Manage stands outside of these areas according to standards and guidelines for Northern goshawk forage areas as provided in the Forest Plan.

Possible Alternatives

A possible alternative to the proposed action at this time includes a no action alternative that would not treat the Tajique watershed to reduce fuel levels.

Responsible Official

The responsible official is Liz Agpaoa, Forest Supervisor, Cibola National Forest Supervisor's Office, 2113 Osuna Road, NE., Albuquerque, NM 87113–1001.

Nature of Decision To Be Made

The decision to be made is whether to implement the proposed action as described above, to vary the design of the proposed action to meet the purpose and need for action through some other combination of activities, or to take no action at this time.

Scoping Process

The Council on Environmental Quality (CEQ) emphasizes an early and open process for determining the scope of issues to be addressed and for identifying significant issues related to the proposed action. As part of the scoping process, the lead agency shall invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, and other interested persons (40 CFR 1501.7). In order to meet the intent of the CEQ regulations, and to meet the requirements under the Healthy Forest Restoration Act, the Cibola Forest will implement the following steps to ensure an early and open public involvement process:

1. Develop the proposed action in collaboration with potentially interested and affected persons, agencies, organizations, and tribes prior to initiation of NEPA.
2. Include the proposed action on the list of projects for annual tribal consultation. Address concerns identified during tribal consultation.
3. Submit the proposed action to the public during scoping, and request comments or issues (points of dispute, debate, or disagreement) regarding the potential effects.
4. Include the proposal on the Cibola Schedule of Proposed Actions quarterly report.
5. Provide an opportunity for the public to comment during an open public meeting. Two meetings are planned for this process, one a public field trip to the project area and one a general meeting at a local community center. Both meetings would occur in August, 2004. Exact dates and locations are yet to be determined.
6. Use comments received to determine significant issues and additional alternatives to address within the analysis.
7. Consult with the U.S. Fish and Wildlife Service and the State Historical Preservation Office regarding potential affects to species or archaeological sites.

8. Prepare and distribute a draft environmental impact statement for a 45-day public comment period.

Permits or Licenses Required

The proposed action includes the use of prescribed fire to reduce fuel loads. A burn plan would be prepared prior to any ignition, and a burn permit would be obtained from the State of New Mexico authorizing the use of the airshed.

Comment Requested

This notice is intent initiates the scoping process which guides the development of the environmental impact statement. Comments should focus on the nature of the action proposed and should be relevant to the decision under consideration. Comments received from the public will be evaluated for significant issues and used to assist in the development of additional alternatives.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. [*Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).*] Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. [*City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)*] Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: August 12, 2004.

Liz Agpaoa,

Forest Supervisor, Cibola National Forest.

[FR Doc. 04–18926 Filed 8–19–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ashley National Forest, Flaming Gorge Ranger District, Utah, Cedar Springs Marina Upgrade

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The proposed action has several parts. It is to resolve dry storage issues, provide suitable shop area including storage, provide a convenience store near the parking lot, provide more adequate boat slippage and also provide more adequate boat sanitation facilities. Other parts of the proposed action are to enlarge the present footprint (acreage) of the marina facilities to accommodate the improvements and to also reissue the special use permit for 25 years.

DATES: Comments concerning the scope of the analysis must be received by 45 days after the legal notice in the Vernal Express on August 18, 2004. The draft environmental impact statement is expected May 2005 and the final environmental impact statement is expected in September 2005.

ADDRESSES: Send written comments to Jeff Schramm, Flaming Gorge District Ranger, Flaming Gorge Ranger District, and P.O. Box 279, Manila, UT 84046.

FOR FURTHER INFORMATION CONTACT: Bill Gossman, ID Team Leader, at Flaming Gorge Ranger District, P.O. Box 279, Manila, UT 84046 or telephone at (435) 781–5282.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action: The Purpose and Need for this project is to provide the public with more adequate recreation facilities and more adequate complimentary services at the Cedar Springs Marina situated on the Flaming Gorge Reservoir within the Flaming Gorge National Recreation Area.

Proposed Action: To fulfill the purpose and need the following actions are proposed and effects will be analyzed:

(1) Extend power to Buckskin Cove, to power adequate boat security, dewatering, and general use facilities for the boats held in the Buckskin Cove slips. This extension would be underground and approximately ¼ mile long.

(2) Move 40 boat slips to the Buckskin Cove after the power line is established. If in the future the water levels continue to drop, compromising additional present boat slips, then up to 40 additional boat slips could be moved to Buckskin Cove.

(3) Allow the proponent to provide a suitable shop building for boat maintenance and equipment and tool storage.

(4) Allow the proponent to provide an adequate dry storage area for boats.

(5) Enlarge the footprint of the SUP to accommodate the improvements being made.

(6) Re-issue the Special Use Permit for a 25-year period.

(7) Allow the proponent to provide a convenience store and restaurant near the parking lot.

Possible Alternatives: Based on the preliminary analysis the following potential alternatives to the proposed action have been formulated:

No Action Alternative—The Marina would continue as it is. Congestion would continue and current facilities would continue to deteriorate and public service would continue to be inadequate based on the Forest Plan, National Recreation Area Management Plan and public demand.

Alternative 3, Partial Marina Upgrade—Develop dries storage and run power to Buckskin Cove. This alternative would relieve some congestion and partially respond to the direction given by the National

Recreation Area Management Plan. There would be no new convenience store or new shop building.

Responsible Official: The Ashley National Forest Supervisor, George Weldon is the responsible official. The address is Ashley National Forest, 355 N. Vernal Ave., Vernal, UT 84078.

Nature of Decision To Be Made: The decision to be made is whether to allow the upgrade of the Cedar Springs Marina, and whether to re-issue the Special Use Permit for 25 years, and also whether to increase the footprint (acreage) of the Special Use Permit as is proposed or to allow partial upgrade of the marina as in Alternative 3 or to not allow the upgrade as is found in the No Action Alternative.

Scoping Process: A scoping letter will be sent to interested parties. The letter will discuss the proposed project and purpose and need along with issues related to the project.

Preliminary Issues: The following are preliminary issues from early analysis. Fluctuating water levels have reduced public service at the marina, there is extreme parking congestion, antiquated facilities limit the proponents ability to provide valuable services to the public, compliance with the Flaming Gorge National Recreation Area Management Plan, and the strong public demand for marina services.

Permits or Licenses Required: Army Corp of Engineers 404 permit

Comment Requested: This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRCD,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement state but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: August 11, 2004.

Eileen Richmond,

Acting Forest Supervisor.

[FR Doc. 04–19058 Filed 8–19–04; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 19, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 14, June 18, and June 25, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 32975, 34121, and 35580) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and services and impact of the additions on the current or most recent contractors, the Committee has determined that the product and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping, or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. The action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and services are added to the Procurement List:

Product

Product/NSN: Side Rack, Vehicle Body, 2510–00–590–9734.

NPA: Tuscola County Community Mental Health Services, Caro, Michigan.

Contract Activity: U.S. Army Tank Acquisition Center, Warren, Michigan.

Services

Service Type/Location: Custodial Services, Grissom Air Reserve Base, 448 Mustang Avenue, Grissom ARB, Indiana.

NPA: Wabash Center, Inc., Lafayette, Indiana.

Contract Activity: Air Force Reserve Command, Grissom ARB, Indiana.

Service Type/Location: Food Service Attendant, Minnesota Air National Guard, St. Paul, Minnesota.

NPA: AccessAbility, Inc., Minneapolis, Minnesota.

Contract Activity: Air National Guard-St. Paul, MN, St. Paul, Minnesota.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–19154 Filed 8–19–04; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 26–2004]

Tumi, Inc.—Application for Subzone Status; Amendment of Application and Reopening of Comment Period

The application for subzone status at the Tumi, Inc. facility in Vidalia, Georgia, submitted by the Savannah Airport Commission (69 FR 34993, 6/23/04), has been amended. The company has amended the application to include kitting operations. The company plans to assemble computer accessory kits, electric adapter kits and modem/electric kits (HTS 8471.60 and 8504.40, duty-free). Imported components that could be included in a kit include: a leather pouch, a computer mouse, receiver, cable, LED light, a power travel adapter and a travel modem (HTS 4202.91, 8471.60, 8471.80, 8504.40, 8544.41 and 9405.40, duty rate ranges from duty-free to 4.5%). The company has also indicated that it will import nylon pouches (HTS 4202.92, duty rate 17.6%), but that they will be admitted to the zone in privileged foreign status.

The comment period for the case referenced above is being reopened until September 20, 2004, to allow interested parties additional time in which to comment. Rebuttal comments may be submitted during the subsequent 15 day period, until October 4, 2004. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

Dated: August 12, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–19138 Filed 8–19–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 8, 2004, the Department of Commerce published the preliminary results of the fourth administrative review of the antidumping duty order on certain preserved mushrooms from India. The review covers five manufacturers/exporters. The period of review is February 1, 2002, through January 31, 2003.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: August 20, 2004.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Katherine Johnson, AD/CVD Office 2, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

The review covers five manufacturers/exporters: Agro Dutch Industries Ltd. (''Agro Dutch''), Dinesh Agro Products, Ltd. (''Dinesh Agro''), Premier Mushroom Farms (''Premier''), Saptarishi Agro Industries, Ltd. (''Saptarishi Agro''), and Weikfield Agro Products Ltd. (''Weikfield''). The period of review is February 1, 2002, through January 31, 2003.

On March 8, 2004, the Department of Commerce (''the Department'') published the preliminary results of the fourth administrative review of the antidumping duty order on certain preserved mushrooms from India (69 FR 10659) (''Preliminary Results''). We invited parties to comment on the preliminary results of review. On March 22, 2004, we received a request for a public hearing from the petitioner.[1]

On May 5, 2004, the Department published in the **Federal Register** the postponement of the final results of the administrative review of the antidumping duty order on certain preserved mushrooms from India (69 FR 25063). We conducted a verification of Agro Dutch's sales data from May 18 through May 21, 2004. At our request, Agro Dutch submitted revised sales data bases on June 2, 2004, which incorporated revisions resulting from the verification.

We received case briefs from Weikfield on June 7, 2004, (brief dated June 2, 2004), and the petitioner, Agro Dutch, and Premier on June 10, 2004. The petitioner and Agro Dutch filed rebuttal briefs on June 17, 2004. Agro Dutch withdrew its rebuttal brief on June 22, 2004, and submitted a replacement brief on June 24, 2004.[2] On June 28, 2004, the petitioner withdrew its request for a public hearing. We have conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act'').

Scope of the Order

The products covered by the order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under the order are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water,

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc.; Modern Mushroom Farms, Inc.; Monterey Mushrooms, Inc.; Mount Laurel Canning Corp.; Mushrooms Canning Company; Southwood Farms; Sunny Dell Foods, Inc.; and United Canning Corp.

[2] The circumstances regarding the withdrawal and replacement of the Agro Dutch rebuttal brief are discussed in a June 28, 2004, memorandum to the file.

brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of the order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms'; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to the order is currently classifiable under subheadings 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Use of Facts Available

As discussed in the Preliminary Results, neither Dinesh Agro nor Saptarishi Agro submitted a response to the Department's antidumping questionnaire. Because of Dinesh Agro's and Saptarishi Agro's refusal to cooperate in this review, we determined that the application of facts available is appropriate, pursuant to section 776(a)(2) of the Act. Further, we determined that it was appropriate to make adverse inferences in applying facts available, in accordance with section 776(b) of the Act. As adverse facts available, we assigned to exports of the subject merchandise produced by Dinesh Agro and Saptarishi Agro the rate of 66.24 percent, the highest rate calculated for any cooperative respondent in the original less-than-fair-value (''LTFV'') investigation or the three previous administrative reviews. We have received no comments on this determination, nor have we found any basis to change this determination. Accordingly, we have applied the adverse facts available rates of 66.24 percent to the exports of the subject merchandise produced by Dinesh Agro and Saptarishi Agro for the POR.

Duty Absorption

As discussed in the Preliminary Results, the Department preliminarily determined that antidumping duties have been absorbed by the producer or exporter during the POR on those sales for which the respondent was the importer of record, in accordance with section 751(a)(4) of the Act, because none of the respondents responded to the Department's request for evidence that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. Premier was the importer of record for all of its sales to the United States, while Agro Dutch and Weikfield were the importers of record for most of their respective U.S. sales. In addition, we found duty absorption for both Dinesh Agro and Saptarishi Agro on all of their sales, based on adverse facts available, because neither company responded to the Department's questionnaire.

As discussed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Jeffrey May, Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated August 13, 2004, at Comment 5, Agro Dutch contended that, during verification, the Department obtained documents which demonstrated that Agro Dutch did not absorb the duties. We disagree with Agro Dutch's contention and find no basis to change this determination for Agro Dutch or any of the other respondents. Accordingly, we find that antidumping duties have been absorbed by the producer or exporter during the POR on those sales for which the respondent was the importer of record.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping duty administrative review are addressed in the Decision Memo, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memo are identical in content.

Changes From the Preliminary Results

Based on our analysis of the comments received, we have made certain changes to the margin calculations, including:

1. We relied on the revised Israeli and U.S. sales data bases submitted by Agro Dutch on June 2, 2004, which incorporated its verification revisions and corrections. We also made additional data corrections based on our verification findings.
2. In using the revised data bases, we found that all of Agro Dutch's sales to Israel were below the COP in the final results. Therefore, we compared all of Agro Dutch's U.S. sales to constructed value (''CV''). Accordingly, we relied on the weighted-average selling expenses and profit ratios derived from Premier's and Weikfield's final results calculations to calculate CV for Agro Dutch.
3. We revised our calculation of indirect selling expenses incurred on U.S. sales for returned merchandise to include the costs of returning all of the merchandise back to India, rather than limiting the expense to the un-resold portion of the returned products as we did in the preliminary results.
4. We corrected the calculation of Agro Dutch's normal value in the comparison market and margin calculation programs to deduct third-country imputed credit expenses from the gross unit price, and to apply the commission offset based on CV selling expenses in the price-to-CV comparisons.
5. We corrected the Agro Dutch margin calculation program to make the proper deduction for third-country commission expenses.
6. We corrected the Premier margin calculation program to treat inventory carrying costs on U.S. sales as an Indian rupee expense, rather than a U.S. dollar expense.
7. We corrected the calculation of Premier's normal value to deduct properly home market commissions from the gross unit price.
8. We corrected the calculation of Weikfield's normal value to deduct home market discounts and commissions paid to unaffiliated parties from the gross unit price in the cost of production test and the calculation of normal value.

Final Results of Review

We determine that the following weighted-average margin percentages exist:

Manufacturer/exporter	Margin (percent)
Agro Dutch Industries Ltd	34.57
Dinesh Agro Products, Ltd	66.24
Premier Mushroom Farms	18.30
Saptarishi Agro Industries, Ltd	66.24
Weikfield Agro Products Ltd	9.35

Assessment

The Department shall determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP within 15 days of publication of these final results of review. In accordance with 19 CFR 351.106(c)(1), we will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, is not less than 0.50 percent). With respect to Agro Dutch and Premier, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing this amount by the total entered value of the sales examined. For Weikfield, we do not have the actual entered value of its sales because this respondent is not the importer of record for some of its U.S. sales. Accordingly, we calculated importer-specific assessment rates by aggregating the dumping margins calculated for all of Weikfield's U.S. sales examined and dividing the respective amount by the total quantity of the sales examined. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on export prices.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this review, except if the rate is less than 0.50 percent, and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.30 percent. This rate is the ''All Others'' rate from the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: August 13, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix—List of Issues

Company-Specific Comments

Agro Dutch

Comment 1: Treatment of Agro Dutch's Expenses for Returned Shipments as Direct or Indirect Expenses

Comment 2: Treatment of Inspection Expenses

Comment 3: Selling Expenses and Profit Ratio for Agro Dutch Constructed Value

Comment 4: Corrections to the Calculation of Agro Dutch Normal Value

Comment 5: Duty Absorption on Agro Dutch's Sales

Premier

Comment 6: Errors in Premier Margin Calculation

Weikfield

Comment 7: Corrections to Calcualtion of Weikfield Normal Value

[FR Doc. 04–19140 Filed 8–19–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081004A]

Incidental Take of Marine Mammals Incidental to Specified Activities; Taking of Harbor Seals Incidental to Wall Replacement and Bluff Improvement Projects at La Jolla, San Diego County, CA

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

ACTION: Notice of receipt of application and proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the City of San Diego, CA to take small numbers of marine mammals, by harassment, incidental to wall replacement and bluff improvement projects at La Jolla, CA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization to the City of San Diego, for 1 year.

DATES: Comments and information must be received no later than September 20, 2004.

ADDRESSES: You may submit comments on the application and proposed authorization, using the identifier 081004A, by any of the following methods:

- E-mail: *PR1.081004A@noaa.gov* - you must include the identifier 081004A in the subject line of the message. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.
- Hand-delivery or mailing of paper, disk, or CD-ROM comments: Stephen L. Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

To help us process and review your comments more efficiently, please use only one method. A copy of the application containing a list of references used in this document may be obtained by writing to the address above or by telephoning the contacts listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Sarah Hagedorn, NMFS, (301) 713–2322 or Monica DeAngelis, NMFS Southwest Region, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

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

Permission may be granted if the Secretary finds that the total taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expidited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except for certain categories of actions not pertinent here, the MMPA defines ''harassment'' as:

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

Summary of Request

On May 27, 2004, NMFS received an application from the City of San Diego requesting an IHA for the possible harassment of small numbers of Pacific harbor seals (Phoca vitulina) incidental to cove wall replacement and bluff improvement projects at La Jolla, CA. The purpose of this bluff improvement project is to protect public access along the coast and to maintain public rights-of-way that have been adversely affected by coastal erosion, in a safe and publicly accessible condition. Bluff improvement measures address ongoing marine and subaerial erosion in six study sites, along with the removal of an aging wall above La Jolla Cove. Improvement measures are limited to remediation of only the upper portion of the bluff, allowing natural marine processes to continue unabated. Mitigation of marine erosion associated with splash and spray on the upper sloping portion of the coastal bluff will be limited to re-vegetation, primarily hydroseeding, and some limited container plants, along with a combination of both setting back and deepening the seaward edge of reconstructed sidewalks to provide some structural stiffness and increased stability, as both marine and sub-aerial processes continue to encroach upon bluff-top improvements. Key objectives of the site improvements are to protect lateral public access along the coast, increase public safety, minimize disturbance of the marine environment and its inhabitants, minimize disruption of public recreation and scenic vista opportunities, avoid disruption of public access to coastal areas, minimize visual impacts by re-vegetating manufactured slopes with native vegetation, avoid changes in runoff patterns, maintain pedestrian and vehicular travel around the construction sites, and avoid the use of rip rap. This activity does not include improvements to Children's Pool itself.

Measurement of Airborne Sound Levels

The following section is provided to facilitate an understanding of airborne and impulsive noise characteristics. Amplitude is a measure of the pressure of a sound wave that is usually expressed on a logarithmic scale with units of sound level or intensity called the decibel (dB). Sound pressure level (SPL) is described in units of dB re micro-Pascal (micro-Pa^2, or μPa); for energy, the sound exposure level (SEL), a measure of the cumulative energy in a noise event, is described in terms of dB re micro-Pa^2 -second; and frequency, often referred to as pitch, is described in units of cycles per second or Hertz (Hz). In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound.

For airborne noise measurements the convention is to use 20 micro-Pa as the reference pressure, which is 26 dB above the underwater sound pressure reference of 1 micro-Pa and is the approximate threshold of human hearing. However, the conversion from air to water intensities is more involved than this and is beyond the scope of this document. NMFS recommends interested readers review NOAA's tutorial on this issue: *http://www.pmel.noaa.gov/vents/acoustics/tutorial/tutorial.html.*

Airborne sounds are also often expressed as broadband A-weighted (dBA) or C-weighted (dBC) sound levels. When frequency levels are made to correspond to human hearing, they are referred to as being A-weighted or A-filtered. With A-weighting, sound energy at frequencies below 1 kHz and above 6 kHz are de-emphasized and approximates the human ear's response to sounds below 55 dB. C-weighting is often used in the analysis of high-amplitude noises like explosions, and corresponds to the relative response to the human ear to sound levels above 85 dB. C-weighting de-emphasizes ear frequency components of less than about 50 Hz. C-weight scaling is also useful for analyses of sounds having predominantly low-frequency sounds, such as sonic booms. For continuous noise like rocket launches, the important variables relevant to assessing auditory impacts or behavioral responses are intensity, frequency spectrum, and duration. In this document, whenever possible sound levels have been provided with A-weighting.

Project Description

The Children's Pool area at La Jolla, including Children's Pool Beach and Seal Rock, is a year-round haulout and rookery for harbor seals. Four of the six construction sites are close to where harbor seals may be hauled out, and therefore may result in the incidental harassment of harbor seals. All construction activities will begin no earlier than July 2004, and will end no later than January 1, 2005. Construction can occur on any site on weekdays between the hours of 8:30 am and 3:30 pm except on national holidays. Demolition and construction may take place simultaneously at all four sites. The duration of construction at any one of these four sites will be limited to six working days total. Demolition of each site is scheduled to last one day. Equipment required for demolition will include hand tools, backhoes, power saws, and pavement breakers and/or jackhammers. No explosives will be used during demolition. The City of San Diego estimates that the maximum received sound exposure level 100 ft (30.5 m) from demolition activities is approximately 90 dBA (re 20 micro-Pa2 -sec). The equipment involved in these activities will include a concrete mixer, power auger, and hand tools. The maximum received sound exposure level at 100 ft (30.5 m) from construction activities is estimated to be about 81 dBA (re 20 micro-Pa^2 -sec).

The entire Cove Wall Replacement and Bluff Improvement Project is expected to take 6 weeks or less. Summaries of the proposed improvements at each of the 4 sites that have a potential to harass harbor seals follows.

Site 55D

This site is located on the 700 block of Coast Boulevard, southeast of Children's Pool Beach. At this site, the existing post-and-board wall located on the slope will be removed. The area eroded by the abandoned storm drain will be filled with a reinforced geometric grid at a 1.5:1 slope. The proposed fill of approximately 20 cubic yds (15.3 cubic m) will extend approximately 14 ft (4.3 m) seaward of the existing corrugated metal pipe outlet, and the toe of the fill will terminate approximately 5 ft (1.5 m) from the edge of the sea cliff. The manufactured slope area will be landscaped with primarily native, erosion control, low water use plants suited to a coastal marine environment.

Site 55F

This site is also located on the 700 block of Coast Boulevard, southeast of Children's Pool Beach. The existing 10 ft-wide (3 m) sidewalk will be removed and a new 10 ft-wide (3 m) sidewalk will be constructed a minimum of 8 ft (2.4 m) from the top of the existing slope. The new sidewalk will have a deepened structural edge 5 ft (1.5 m) in thickness to provide the structural capacity to span the rubble-filled sea cave below. To minimize runoff, the curb will be installed and the sidewalk will be cross-sloped 1.5% toward the street and away from the bluff top. The existing wood posts and metal rails will be removed and new wood posts and metal rails will be located at the outer edge of the relocated sidewalk. The face of the existing vertical slope will be trimmed back somewhat to improve surficial stability and assist in the establishment of a vegetative cover. The exposed slope area will be landscaped with primarily native, erosion control, low water use plants suited to a coastal marine environment.

Site 57E

This site is located on the 800 block of Coast Boulevard, southwest of Jenner Street, adjacent to Seal Rock. The existing 5 ft-wide (1.5 m) sidewalk will be removed and a new 5 ft-wide (1.5 m) sidewalk with a deepened structural edge 5 ft (1.5 m) in thickness will be constructed. The existing wood posts and wood rails will be removed and new wood posts and wood rails will be located at the outer edge of the reconstructed sidewalk. The exposed slope areas will be landscaped with primarily native, erosion control, low water use plants suited to a coastal marine environment.

Site 58A

Site 58A is located on the 900 block of Coast Boulevard, southwest of Ocean Street. The existing 10 ft-wide (3 m) sidewalk will be removed and a new 10 ft-wide (3 m) sidewalk with a deepened structural edge 5 ft (1.5 m) in thickness will be constructed. The existing wood posts and wood rails will be removed and new wood posts and wood rails will be located at the outer edge of the reconstructed sidewalk. The exposed slope areas will be landscaped with primarily native, erosion control, low water use plants suited to a coastal marine environment.

Description of Habitat and Marine Mammals Affected by the Activity

The marine mammal species known to be present in the Children's Pool area is the harbor seal (Phoca vitulina). Harbor seals are widely distributed in the North Atlantic and North Pacific. In California, approximately 400–500 harbor seal haul-out sites are distributed along the mainland and on offshore islands, including intertidal sandbars, rocky shores and beaches (Hanan 1996).

In California, the population growth rate of harbor seals appears to be slowing, but remains positive. A complete count of all harbor seals in California is impossible because some are always away from the haul-out sites. A complete pup count (as is done for other pinnipeds in California) is also not possible because harbor seals are precocious, with pups entering the water almost immediately after birth. The estimated population of harbor seals in California is 27,863 (NOAA Draft Stock Assesment Report, 2003), with an estimated minimum population of 25,720 for the California stock of harbor seals.

Recent population counts show that the harbor seal population in La Jolla is stable at approximately 150–200 seals. The most important birth month for this population is March (NOAA). In general, the pupping season occurs between early February to May, however some pups are born as early as late January. In 2001, 17 pups were born between February 12 and April 15; in 2002, 13 pups were born between February 2 and April 27; and in 2003, 16 pups were born between January 24 and April 2. In 2004, 26 pups were born between the end of January and the end of April, however only 20 of the 26 pups survived.

Additional information on harbor seals found in Central California waters can be found in Marine Mammal Stock Assessment Reports, which is available online at *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html.*

Marine Mammal Impacts

The applicant requests authorization for incidental taking, by Level B harassment only, of Pacific harbor seals. Level B Harassment may occur if hauled animals flush the haulout and/or move to increase their distance from construction-related activities, such as the presence of workers, noise, and vehicles. Short term impacts that could occur include possible temporary reduction in utilization of the beach or Seal Rock at Children's Pool. These short term impacts may result in a temporary reduced number of seals using the haul out sites during, and potentially past, the hours of construction. However, this area has become a tourist spot for viewing harbor seals, and the current population of seals utilizing the Children's Pool area is accustomed to human activities and regular noise levels from people and traffic along Coast Boulevard. Therefore, potential impacts from the project are expected to be minimal to none. The permanent abandonment of the Children's Pool area is also not anticipated because harbor seals have habituated to traffic noise. Depending on the disturbance, they may return to the haul-out site immediately, stay in the water for a length of time and then return to the haul-out, or temporarily haul-out at another site (NOAA, 1996).

Recent studies (Lawson *et al.*, 2002, and NAWS, 2002) show that Level B harassment, as evidenced by beach flushing, will sometimes occur upon exposure to launch sounds with sound exposure levels of 100 dBA (re 20 micro-Pa^2 -sec) or higher for California sea lions and northern elephant seals, and 90 dBA (re 20 micro-Pa^2 -sec) or higher for harbor seals. Therefore, it is expected that most received noise levels at the harbor seal haulouts will be below levels that are likely to cause disturbance. However, to date that remains unknown. As stated earlier, the maximum received levels at 100 ft away (30.5 m) from demolition and construction activities are expected to be about 90 dBA and 81 dBA, respectively. Sites 55D and 55F are closest to Children's Pool Beach. These sites are approximately 250 ft (76.2 m) from the beach haulout area used by the harbor seals. At that distance there should be little to no impact on the

seals. Sites 57E and 58A are closer to Seal Rock. 58A is almost 400 ft (122 m) from Seal Rock, and is not expected to cause any harassment of the seals hauled out on Seal Rock. 57E is the closest of the four to any of the haulout areas. This site is approximately 170 ft (51.8 m) from Seal Rock (dependant on tide), and about 350 ft (106.7 m) from Children's Pool Beach. At this distance, construction noise will have attenuated to low levels. However, special attention will be given to this site during construction and monitoring (see MONITORING).

Demolition of sidewalks at the top of the bluff slopes and excavation for the new sidewalks may result in some downhill movement of debris. Just prior to the construction necessitating its use, a debris fence will be installed parallel to and just below the bluff edge and held in place with stakes driven by hand using a large hammer. The expected debris would be soil or small pieces of concrete that could be removed by hand or shovel. Noise levels for installing the fence and removing debris trapped in it will be low and unlikely to harass harbor seals. The proximity of the sites will not enable debris to fall onto Seal Rock or the beach where the seals haul out.

Potential incidental harassment resulting from bluff stabilization construction may occur in all age classes and sexes of harbor seals present in the Children's Pool area. The number of harbor seals at Children's Pool Beach and Seal Rock varies throughout the year. For the population of seals occupying Children's Pool, the numbers of seals that haul out vary with season, tide, and time of day (Hubbs-SeaWorld Research Institute 1995–1997). More haulout area is available to be occupied during low tide. However, sometimes those animals that are on land will move higher up the beach to avoid the approaching tide and thus do not necessarily leave the haulout area. For the La Jolla area in general, a greater number of animals were seen hauled out in late afternoon or evening, regardless of the tide. In general, there is a decrease in counts in late summer through winter in La Jolla. The largest numbers of seals are seen during the molting/breeding season. Also, the number of seals hauled-out generally decreased during the first few calm days after a storm.

Peak numbers of harbor seal counts for the La Jolla area in general were 166 in June, 1996 and 172 in July, 1997 (H-SWRI, 1995–1997). These numbers were recorded at the peak of the breeding season, the typical time of maximum haulout. As stated earlier, the population in La Jolla is stable at approximately 150–200 seals. Population trends from 1999 revealed that the largest counts of seals hauled out on the beach were between January to May, with a peak in counts in June at Seal Rock. The maximum number of harbor seals using the Children's Pool haulout areas at one time can vary between 62 and 172 (H-SWRI, 1995–1997). Therefore, the maximum number that could be impacted would be 172. There is no anticipated impact from construction activities on the availability of the species or stocks for subsistence uses because there is no subsistence harvest of marine mammals in California.

Although the seals in the area have become accustomed to the presence of tourists viewing the haulout site, the addition of construction workers, construction equipment (in particular the sudden noise of a jackhammer or power saw), and other project related activities could result in a temporary startle response when harbor seals may flush into the water. However, the likelihood of this occurring is very low, and with the implementation of mitigation measures, disturbance from construction-related activities is expected to have only a short term negligible impact to a small number of harbor seals. Demolition and construction work is not expected to result in injury or mortality because the proposed work restrictions and mitigation measures will minimize construction-related disturbance. At a maximum, short-term impacts are expected to result in a temporary reduction in utilization of haulout sites while work is in progress or until seals acclimate to the disturbance, and will not likely result in any permanent reduction in the number of seals at Children's Pool or at Seal Rock. NMFS preliminarily agrees with the City of San Diego that effects will be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment.

Mitigation

Several mitigation measures to reduce the potential for harassment from wall replacement and bluff improvement construction activities will be implemented under the proposed authorization. The primary mitigation measure is the minimization of days and times when construction can take place. Demolition will be limited to one day at each of the four sites, ensuring that the greatest possible noise levels will only occur for a short period of time. In addition, construction activities will not take place prior to 8:30 am and will not go beyond 3:30 pm. Harbor seals in this area are known to use haulout areas in greatest numbers in the afternoon. Since construction activities will be finished by 3:30 pm every day, this minimizes the number of harbor seals potentially disturbed. Disturbance to harbor seals has a more serious effect when seals are pupping or nursing, when aggregations are dense, and during the molting period. To ensure that construction activities are not overlapping with the pupping season, the contractor will coordinate with ''Friends of La Jolla Seals'' or Hubbs-SeaWorld Research Institute. Either of these organizations will confirm when the pupping season has come to an end, usually sometime in late June or early July 2004, after the last pup has been weaned. Once this is confirmed, construction activities may begin with the approval of NMFS. The pupping season for harbor seals begins in early February, however pregnant females are hauled out at Children's Pool in the weeks leading up to the pupping season, therefore all construction activity will be completed by the 1st of January, 2005. These proposed mitigation measures will reduce the potential for Level B incidental harassment takes and eliminate the potential for serious injury or mortality of Pacific harbor seals.

As mentioned, demolition of sidewalks at the top of the bluff slopes and excavation for the new sidewalks may result in some downhill movement of debris. Just prior to the construction necessitating its use, a debris fence will be installed parallel to and just below the bluff edge and held in place with stakes driven by hand using a large hammer. This ensures that demolition will result in a minimal amount of debris on Seal Rock or the nearby beach.

Monitoring

Harbor seal haulouts will be monitored periodically during construction activities. Monitoring will be conducted by a qualified biologist approved by NMFS. During all monitoring periods, the following information will be recorded: date, time, tidal height, maximum number of harbor seals hauled out, number of adults and sub-adults, number of females and males (if possible), and any observed disturbances to the seals. During periods of construction, a description of construction activities will also take place.

Prior to construction at each of the four sites, three full days of baseline monitoring will occur to assess harbor seal use of the haulouts before construction begins. Wall replacement and bluff stabilization activities will

begin with one day of demolition at each site. Monitoring at each site during demolition will start one hour before demolition begins, run all day, and will be completed no sooner than one hour after it ends.

Results from the pre-construction baseline monitoring will determine if mid-day monitoring is necessary during the days of construction following demolition. If it is determined that it is necessary and/or beneficial, monitoring will take place at each site during every day of construction starting one hour before construction begins each day and finishing one hour after it ends each day. For sites 55D, 55F and 58A, if it is determined that mid-day monitoring is not necessary, 2 two-hour monitoring sessions will occur each day of construction following demolition. The first session will begin one hour before the start of construction and end one hour after the start of construction, and then begin again one hour before the end of construction and end one hour after construction has finished for the day. Site 57E is the closest work site to Seal Rock, about 170 feet (51.8 m) away. At this distance, much of the construction noise will have attenuated to low levels. However, NMFS believes careful monitoring of this site is still warranted. Despite results from baseline monitoring, monitoring will take place at site 57E during every day of construction starting one hour before construction begins each day and finishing no earlier than one hour after construction ends each day.

Sound levels 100 feet (30.5 m) from each site will be recorded during all periods of monitoring. If at any time indications of a substantial disturbance to harbor seals resulting from construction activities are observed, and/or if sound levels are found to be above 90 dBA at a distance of 100 feet (30.5 m) from construction at any of the sites, the applicant will contact NMFS to provide this information. It will then be determined if any further mitigation or monitoring measures are needed, such as the installation of sound barriers. However, at this time NMFS does not propose requiring sound barriers because sound levels appear to be low at most, if not all, sites to even cause Level B behavioral harassment.

Reporting

A draft report will be submitted to NMFS Regional Administrator within 90 days after project completion. The final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft report will be considered to be the final report.

The City of San Diego is planning on sharing and comparing data collected as a result of these monitoring efforts with other interested parties, such as the Hubbs-Sea World Research Institute or Friends of La Jolla Seals. Monitoring work during this project may be conducted in collaboration with these groups as well.

Endangered Species Act (ESA)

NMFS does not expect any species listed under the ESA to be affected by the planned construction activities. However, NMFS will continue to review this action and will decide on whether consultation under section 7 of the ESA on the issuance of an IHA under section 101(a)(5)(D) of the MMPA is necessary prior to making a final decision.

National Environmental Policy Act (NEPA)

On September 15, 2003, the City of San Diego completed an Environmental Impact Report (EIR) for the proposed La Jolla Cove Wall Replacement and Bluff Improvements Project. NMFS is reviewing this EIR and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA.

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impacts of wall replacement and bluff improvement activities, as described in this document and in the application for an IHA, should result in only the temporary modification in behavior by Pacific harbor seals. The City of San Diego believes the effects of demolition and construction are expected to be limited to short term and localized changes in behavior involving small numbers of pinnipeds. While behavioral modifications, including temporarily vacating onshore haulouts, may be made by the seals, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Proposed Authorization

NMFS proposes to issue an IHA to the City of San Diego for the potential harassment of small numbers of Pacific harbor seals, incidental to wall replacement and bluff improvement, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of Pacific harbor seals and will have no more than a negligible impact on this marine mammal stock.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: August 13, 2004.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–19054 Filed 8–19–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080904E]

Atlantic Highly Migratory Species; Exempted Fishing Permits

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

ACTION: Notice of receipt of a request for exempted fishing permits; request for comments.

SUMMARY: NMFS announces the receipt of a request for exempted fishing permits (EFPs) for conducting bycatch reduction research in the following regions of the Atlantic Ocean: North of Cape Hatteras, South of Cape Hatteras, and Gulf of Mexico (GOM). NMFS invites comments from interested parties on potential concerns should these EFPs be issued.

DATES: Written comments on the proposed exempted fishing activity must be received no later than September 2, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- Email: *ID080904E@noaa.gov*. Include in the subject line the following identifier: I.D.080904E.
- Mail: Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- Fax: (301)713–1917.

FOR FURTHER INFORMATION CONTACT: Heather Stirratt, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: EFPs are requested and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management

Act (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, and exempted educational activity with respect to Atlantic HMS.

Several operators of permitted Atlantic pelagic longline vessels have requested exemptions from certain regulations applicable to the harvest and landing of Highly Migratory Species (HMS) in order to conduct bycatch reduction research in the following regions of the Atlantic Ocean: North of Cape Hatteras, South of Cape Hatteras, and Gulf of Mexico (GOM). Specifically, the permitted pelagic longline vessels propose to test gear modifications and/or various fishing techniques to avoid incidentally-caught white marlin, blue marlin, bluefin tuna, and sea turtles, while allowing for the targeted catches of allowed species.

Research experiments will be carried out, to the extent practicable, within open fishing areas. However, due to statistical protocols to demonstrate the effectiveness of gear modifications it may be necessary to conduct comparison experiments inside of existing closed areas. Restricted access within existing closed areas has been proposed by the applicants as terms and conditions of the proposed research in order to minimize or eliminate the potential for gear and/or fishing grounds conflicts. Within the GOM region, two pelagic longline vessels propose to conduct 100 compensated bycatch reduction fishing sets (approximately 750 hooks/set) during a limited time period (May through October). Within the North of Cape Hatteras region, two pelagic longline vessels propose to conduct 50 compensated bycatch reduction fishing sets (approximately 680 hooks/set) during a limited time period (May, June, and July). Within the South of Cape Hatteras region, two pelagic longline vessels propose to conduct 50 compensated bycatch reduction fishing sets (approximately 556 hooks/set) during a limited time period (October through December).

This research may benefit all interested parties by providing fishery managers with additional gear modifications and/or fishing techniques that reduce or avoid incidental capture/bycatch mortality of highly migratory species (HMS) in the research areas as proposed above.

The regulations that would prohibit the proposed activities include requirements for size limits (50 CFR 635.20) and gear operation and deployment (50 CFR 635.21).

NMFS invites comments from interested parties on potential concerns should these EFPs be issued.

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

Dated: August 13, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–19053 Filed 8–19–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081604B]

Endangered Species; File No. 1494

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that St. George's School, P.O. Box 1910, Newport, RI, 02840, has applied in due form for a permit to take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before September 20, 2004.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1494.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Jennifer Skidmore, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to capture, weigh, measure, flipper tag, tissue sample and release 50 loggerhead, 5 green, 5 hawksbill, 5 Kemp's ridley sea turtles. Animals would be captured by dip net or by hand from the waters of the western Atlantic Ocean. The applicant also proposes to import tissue samples from each of these species taken legally during separate research being conducted in the waters of the Bahamas. The purpose of the research conducted under Permit No. 1494 would be to obtain life history and growth rate data on these species. Information from this study would be used to help determine migratory behavior and habitat utilization of sea turtles. The results of this study would provide a better understanding of the migratory demographics for constructing models that can then be used to better formulate species management plans.

Dated: August 16, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–19167 Filed 8–19–04;8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 040812237–4237–01]

NOAA Five-Year Research Plan Draft and NOAA Twenty-Year Research Vision Draft

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice and Request for Public Comment.

SUMMARY: NOAA publishes this notice to announce the availability of the NOAA 5-Year Research Plan Draft and the NOAA 20-Year Research Vision Draft for public comment.

DATES: Comments on these draft documents must be submitted by September 30, 2004.

ADDRESSES: The NOAA 5-Year Research Plan Draft will be available at the following location: *ftp://www.oarhq.noaa.gov/review/5* and the NOAA 20-Year Research Vision Draft will be available at: *ftp://www.oarhq.noaa.gov/review/20*.

The public is encouraged to submit comments on the NOAA 5-Year Research Plan Draft electronically to: *Review.5Year@noaa.gov*. The public is encouraged to submit comments on the NOAA 20-Year Research Vision Draft electronically to: *Review.20Year@noaa.gov*. For commenters who do not have access to a computer, comments on both documents may be submitted in writing to: NOAA Research, c/o Dr. Terry Schaefer, Silver Spring Metro Center Bldg. 3, Room 11863, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Terry Schaefer, Silver Spring Metro Center Bldg. 3, Room 11863, 1315 East-West Highway, Silver Spring, Maryland 20910 (phone (301) 713–2465 ext. 184), during normal business hours of 8 a.m. to 5 p.m. Eastern Time, Monday through Friday, or visit the NOAA Research Council Web site at: *http://www.nrc.noaa.gov/Reports.htm*.

SUPPLEMENTARY INFORMATION: NOAA is publishing this notice to announce the availability of the NOAA 5-Year Research Plan Draft and the NOAA 20-Year Research Vision Draft for public comment. The NOAA 5-Year Research Plan Draft and the NOAA 20-Year Research Vision Draft will be posted for public comment on August 20, 2004. The NOAA Research Council is seeking public comment from all interested parties. The NOAA 5-Year Research Plan Draft and the NOAA 20-Year Research Vision are being issued for comment only and are not intended for interim use. Suggested changes will be incorporated, where appropriate, in the final version.

The NOAA 5-Year Research Plan and the NOAA 20-Year Research Vision are being developed by the NOAA Research Council in response to a January 2004 recommendation from the NOAA Science Advisory Board that NOAA take immediate steps to promulgate a NOAA-wide research plan that is consistent with NOAA's Strategic Plan.

The NOAA 5-Year Research Plan Draft lays the path for how NOAA's research enterprise will begin to deliver, in the short-term, improvements to existing forecasting tools. This plan explicitly states outcomes for the short term and the milestones by which we intend to measure progress towards achieving those outcomes, framed within a vision of a future NOAA.

In order to address the longer-term research goals of the agency, the Research Council has developed the NOAA 20-Year Research Vision Draft. This high-level document intends to outline some of the potential products and services that NOAA will provide in the future, and will further aid environmental forecasting and management over the next 20 years.

NOAA welcomes all comments on the content of the NOAA 5-Year Research Plan Draft and the NOAA 20-Year Research Vision Draft. We also request comments on any inconsistencies perceived within the documents, and possible omissions of important topics or issues. For any shortcoming noted within the draft documents, please propose specific remedies.

Please adhere to the instructions detailed herein for preparing and submitting your comments. Using the format guidance described below will facilitate the processing of reviewer comments and assure that all comments are appropriately considered. Please provide background information about yourself on the first page of your comments: Your name(s), organization(s), area(s) of expertise, mailing address(es), telephone and fax numbers, e-mail address(es). Overview comments should follow your background information and should be numbered. Comments that are specific to particular pages, paragraphs, or lines of the section should follow any overview comments and should identify the page numbers to which they apply. Please number and print identifying information at the top of all pages.

Public comments may be submitted from August 20, 2004, through September 30, 2004.

Dated: August 17, 2004.

Richard D. Rosen,

Chair, NOAA Research Council.

[FR Doc. 04–19219 Filed 8–19–04; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

Technology Administration

Technology Administration Performance Review Board Membership

The Technology Administration Performance Review Board (TA PRB) reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and reviews performance-related pay increases for ST–3104 employees. The Board makes recommendations to the appropriate appointing authority concerning such matters so as to ensure the fair and equitable treatment of these individuals.

This notice lists the membership of the TA PRB and supersedes the list published in **Federal Register** document 04–2830, Vol. 69, No. 27, page 59575, dated February 10, 2004.

Daniel W. Caprio, Jr. (NC); Deputy Assistant Secretary for Technology Policy, Office of Technology Policy, Technology Administration, Washington, DC, Appointment Expires: 12/31/06.

Belinda L. Collins (C), Deputy Director for Technology Services, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/05.

Stephen Freiman (C), Deputy Director, Materials Science & Engineering Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/04.

Cita Furlani (C), Chief Information Officer, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/05.

Daniel Hurley (C), Director of Communication and Information Infrastructure Assurance Program, National Telecommunications and Information Administration; Washington, DC 20230, Appointment Expires: 12/31/05.

Deirdre Jones (C), Director of Systems Engineering Center, Office of Science and Technology, National Weather Service, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910, Appointment Expires: 12/31/05.

William F. Koch (C), Deputy Director, Chemical Science & Technology Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/04.

Michelle O'Neill (C), Deputy Under Secretary of Commerce for

Technology, Technology Administration, Department of Commerce, Appointment Expires: 12/31/06.

Dated: August 13, 2004.

Benjamin H. Wu,

Senior Advisor for Technology Administration, Department of Commerce.

[FR Doc. 04–19051 Filed 8–19–04; 8:45 am]

BILLING CODE 3510–18–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Senior Executive Service Performance Review Board

AGENCY: Office of the Inspector General of the Department of Defense.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service (SES) Performance Review Board (PRB) for the Office of the Inspector General of the Department of Defense (OIG DoD), as required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of SES performance appraisals and makes recommendations regarding performance ratings and performance awards to the Inspector General.

EFFECTIVE DATE: August 23, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Peterson, Director, Human Capital Management Directorate, Office of the Chief of Staff, OIG DoD, 400 Army Navy Drive, Arlington, VA 22202, (703) 602–4516.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the OIG DoD, PRB:

Charles W. Beardall, Director, Defense Criminal Investigative Service, ODIG-Investigations

Patricia A. Brannin, Assistant Inspector General for Audit Policy and Oversight, ODIG-Inspections and Policy

Thomas F. Gimble, Deputy Inspector General for Intelligence

Paul J. Granetto, Director, Defense Financial Auditing Service, ODIG-Auditing

Louis J. Hansen, Deputy Inspector General for Inspections and Policy

Richard T. Race, Deputy Inspector General for Investigations

Francis E. Reardon, Deputy Inspector General for Auditing

David K. Steensma, Director, Contract Management, ODIG-Auditing

Shelton R. Young, Director, Readiness and Logistics Support, ODIG-Auditing

Dated: August 17, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–19182 Filed 8–19–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of the Draft Environmental Impact Statement/Environmental Impact Report for the Proposed Prado Basin Water Supply, Riverside and San Bernardino Counties, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers has prepared a Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) and a Feasibility Report for the Proposed Prado Basin Water Supply, which will result in increasing the water storage pool during the flood season, from an elevation of 494 feet to an elevation of 498 feet, within Prado Basin. This will enable increased water recharge at the Orange County Water District's recharge facilities downstream of Prado Dam.

The proposed project will allow storage of water, between elevations 494 and 498 feet, between the months of October and March. Current water conservation within Prado Basin allows for storage of water at elevation 494 during the winter months, and up to an elevation of 505 feet between March and October. The proposed project will allow storage of water at a higher elevation during the winter season, with the pool being evacuated before any storm flows enter the basin. This will ensure that there is no impact to the flood control capacity of the Prado Dam.

The proposed project is not expected to have any significant environmental impacts. Storing water within Prado Basin and releasing at a rate supporting downstream recharged by Orange County Water District is expected to benefit the population of Orange County by increasing the amount of water being stored within the local aquifer, thereby reducing the dependence on outside water sources. No long-term adverse ecological or environmental health effects are expected due to the proposed water storage.

DATES: The draft EIS/EIR will be released for public review on or about August 20, 2004. The Environmental Protection Agency plans to publish a Notice of Availability of the Draft EIS/EIR in the **Federal Register** on or about August 20, 2004. Comments concerning this Draft EIS/EIR should be submitted by October 4, 2004.

ADDRESSES: Submit written comments to District Engineer, U.S. Army Corps of Engineers, Los Angeles District, ATTN: Mr. Alex Watt, CESPL–PD–RQ, P.O. Box 532711, Los Angeles, CA 90053–2325.

FOR FURTHER INFORMATION CONTACT: For information on the Draft EIS/EIR, contact Mr. Alex Watt, Environmental Coordinator, U.S. Army Corps of Engineers, Los Angeles District, at (213) 451–3860. For further information on the Draft Feasibility Report, contact Mr. Robert Stuart, Study Manager, U.S. Army Corps of Engineers, Los Angeles District, at (213) 451–3811.

SUPPLEMENTARY INFORMATION:

1. Authorization: Prado Dam was authorized by the Flood Control Act of June 22, 1936, Public Law 74–738, as amended. The authority to study the feasibility of water conservation at Prado Dam is provided by the resolution of the Committee on Public works of the House of Representatives dated May 8, 1964.

2. Background: Prado Dam and Flood Control Basin are located on the Santa Ana River, approximately 31 miles upstream from the mouth of the river at the Pacific Ocean. The dam is owned and operated by the U.S. Army Corps of Engineers. The dam and basin are located in Riverside County, CA, approximately 3 miles upstream from the Riverside-Orange County line.

The Army Corps of Engineers has prepared a draft EIS/EIR to assess the environmental effects associated with the proposed Prado Basin Water Supply project to increase the level of the water storage pool during the flood season, from an elevation of 494 feet to elevation 498 feet, within Prado Basin. This will enable increased water recharge at the Orange County Water District's recharge facilities downstream of Prado Dam. The Orange County Water District (OCWD) is the non-federal sponsor for the project. The OCWD participated in the study and contributed to the development of the alternatives for water conservation.

The proposed project will allow storage of water, between elevations 494 and 498 feet, between the months of October and March. Current water conservation within Prado Basin allows for storage of water only to elevation 494 during the winter months, and up to an elevation of 505 feet between March and October. The proposed

project will allow storage of water at a higher elevation during the winter season, with the pool being evacuated before any storm flows enter the basin. This will ensure that there is no impact to the flood control capacity of the Prado Dam. The public will have the opportunity to comment on this analysis before any action is taken to implement the proposed action.

3. Proposed Action. The proposed project will allow storage of water, between elevations 494 and 498 feet, between the months of October and March. Current water conservation within Prado Basin allows for storage of water only to elevation 494 during the winter months, and up to an elevation of 505 feet between March and October. The proposed project will allow storage of water at a higher elevation during the winter season, with the pool being evacuated before any storm flows enter the basin. This will ensure that there is no impact to the flood control capacity of the Prado Dam.

4. Alternatives: Five alternatives, including a No Action alternative, are evaluated in the Draft EIS/EIR. The alternatives examine conserving water up to different elevations during the flood and non-flood seasons. The flood season is considered be the period from October 1 through February 28 of each year.

5. Scoping Process: The Army Corps of Engineers conducted a scoping meeting prior to preparing the EIS/EIR to aid in determining the significant environmental issues associated with the proposed action. The meeting was held in the City of Corona, California, on November 17, 1997. A public hearing to receive comments on the Draft EIS/EIR will be held in conjunction with the public meeting to present the feasibility report. The location, date, and time of the public hearing will be announced in the local news media, and separate notice will also be sent to all parties on the project mailing list.

Participation by all interested Federal, State and County resource agencies, as well as Native American peoples, groups with environmental interests, and all interested individuals is encouraged. The public review period will conclude 45 days after publication of this notice.

Individuals and agencies may offer information or data relevant to the environmental or socioeconomic impacts by attending the public scoping meeting, or by mailing the information to Mr. Alex Watt at the address provided in this notice prior to October 4, 2004. Comments, suggestions, and requests to be placed on the mailing list for announcements and for the Draft DEIS, should also be sent to Alex Watt. The U.S. Army Corps of Engineers and the OCWD, the non-federal sponsor, will consider public concerns on the Draft EIS/EIR. A summary of the Public Hearing and written comment letters and responses will be incorporated into the Final EIS/EIR as appropriate.

6. Availability of the Draft EIS: Copies of the Draft EIS/EIR are available for review at the following locations:

(1) U.C. Riverside General Library, Government Documents, 900 University Avenue, Riverside, CA 92517.

(2) C.S.U. Fullterton Library, 800 N. State College, Fullterton, CA 92833.

(3) Chino Branch Library, 13160 Central Avenue, Chino, CA 91710.

(4) City of Anaheim, Main Library, 500 W. Broadway, Anaheim, CA 92805.

(5) Corona Public Library, 650 S. Main Street, Corona, CA 92882.

(6) Orange County Public Library, 17565 Los Alamos, Fountain Valley, CA 92708.

(7) Norco Public Library, 3954 Old Hamner Road, Norco, CA 91760.

(8) Orange County Water District, 10500 Ellis Avenue, Fountain Valley, CA 92728.

(9) U.S. Army Corps of Engineers, Los Angeles District, Environmental Resources Branch, 915 Wilshire Boulevard, 14th Floor, Lost Angeles, CA 90053.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–19116 Filed 8–19–04; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Northern Colorado Water Conservancy District's Northern Integrated Supply Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (COE) is preparing an Environmental Impact Statement (EIS) to analyze the direct, indirect, and cumulative effects of a proposed water supply project, the Northern Integrated Supply Project. Construction of the proposed Project is expected to result in temporary and permanent impacts to jurisdictional waters of the United States, thereby requiring a Clean Water Act section 404 permit. The Project is a collaborative regional water supply project between 15 water providers (Participants) and the Northern Colorado Water Conservancy District acting by and through the Northern Integrated Supply Project Water Activity Enterprise (District). The Project will provide approximately 37,000 acre-feet of new reliable water supply, which will meet a portion of the Participants' estimated 2025 additional water supply needs. The Northern Integrated Supply Project would be a non-Federal project constructed, owned, and operated by the District.

DATES: Scoping meetings will be held on:

1. September 20, 3004, 6:30 to 9 p.m., Eaton, CO.
2. September 21, 2004, 6:30 to 9 p.m., Fort Collins, CO.
3. September 22, 2004, 6:30 to 9 p.m., Fort Collins, CO.

ADDRESSES: The scoping meeting locations are:

1. September 20, 2004, at the Eaton Country Club, 37661 Weld County Road 39, Eaton, CO.
2. September 21, 2004, at the Fort Collins Lincoln Center, Columbine Room, 417 West Magnolia Street, Fort Collins, CO.
3. September 22, 2004, at the American Legion Post 4, 2124 Country Road 54 G, Fort Collins, CO.

FOR FURTHER INFORMATION CONTACT: Questions and comments regarding the proposed action and EIS should be addressed to Mr. Chandler Peter, Project Manager, U.S. Army Corps of Engineers, 2232 Dell Range Blvd., Suite 210, Cheyenne, WY 82009; (307) 772–2300; *chandler.j.peter@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The COE will be conducting public scoping meetings at three locations (See **DATES** and **ADDRESSES**) to describe the Project, preliminary alternatives, the NEPA compliance process, and to solicit input on the issues and alternatives to be evaluated and other related matters. Written comments for scoping will be accepted until October 25, 2004. The COE has prepared a scoping announcement to familiarize agencies, the public and interested organizations with the proposed Project and potential environmental issues that may be involved. The scoping announcement includes a list of the Participants' water supply requests for the Project. Copies of the scoping announcement will be available at the public scoping meetings or can be requested by mail.

The Participants are a group of growing towns and rural domestic water districts located in Larimer, Weld, and Boulder Counties, Colorado. The Participants are: Berthoud, Central Weld County Water District, East Larimer

County Water District, Eaton, Erie, Evans, Fort Collins Loveland Water District, Fort Lupton, Fort Morgan, Lafayette, Left Hand Water District, Little Thompson Water District, North Weld County Water District, Northern Colorado Water Association, and Windsor.

The District and Participants have identified a preferred configuration of the Project as part of their Phase II Alternatives Evaluation efforts. The proposed Project would occur in Larimer and Weld Counties in Colorado. It would include a proposed Glade Reservoir with a capacity of approximately 177,000 acre-feet. Associated with Glade Reservoir are a forebay, pump station, and canal upgrade to convey water diverted from the Cache la Poudre River to the proposed reservoir. A pipeline connecting the proposed Glade Reservoir to the existing Horsetooth Reservoir is proposed. Glade Reservoir would innundate a section of U.S. Highway 287 and require the relocation of about 7 miles of the highway. Additionally, Glade Reservoir would innundate a section of the North Poudre Supply Canal and a portion of the canal would need to be rerouted. The proposed Project also would include a proposed Galeton Reservoir with a capacity of approximately 30,000 acre-feet. Associated with Galeton Reservoir are a forebay, pump station, and pipeline to deliver South Platte River water to Galeton Reservoir. Water exchanges between the Galeton Reservoir and Glade Reservoir diversion locations are proposed.

Most of the Participants predominantly rely on Colorado-Big Thompson (C–BT) units to meet their growing water supply needs. The Participants recognize that there is a finite amount of C–BT units remaining in the market and that a collaborative effort to secure additional firm water supplies is preferable to each entity independently developing a new water supply. In the future, there could be additional Participants and an increased request for water supply to be provided by the Project because other water providers are considering participating in the Project. The District formed in 1937 under the Colorado Water Conservancy Act and is responsible for the operation of the water features of the Colorado-Big Thompson Project and for the coordination of cooperative water supply and management projects within the boundaries of the District.

The EIS will be prepared according to the COE's procedures for implementing the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4232(2)(c), and consistent with the COE's policy to facilitate public understanding and review of agency proposals. As part of the EIS process, a full range of reasonable alternatives, including the proposed Project and no action, will be evaluated.

The COE has invited the U.S. Bureau of Reclamation, the U.S. Environmental Protection Agency, the Federal Highway Administration, the U.S. Fish and Wildlife Service, the Bureau of Land Management, and the Colorado Department of Transportation to be cooperating agencies in the formulation of the EIS.

Chandler J. Peter,

Project Manager, Regulatory Branch.

[FR Doc. 04–19117 Filed 8–19–04; 8:45 am]

BILLING CODE 3710–62–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Development of Military Family Housing (MFH) in the San Diego Region

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Record of Decision.

SUMMARY: The Department of the Navy (DON) announces its decision to construct up to 1,600 MFH units and supporting infrastructure at Marine Corps Air Station (MCAS) Miramar, San Diego, CA. This will be accomplished by implementing the MFH Site 8A Alternative, as described in the Final Environmental Impact Statement (FEIS) for Military Family Housing in the San Diego Region. This decision will greatly improve conditions for enlisted service members and their families.

FOR FURTHER INFORMATION CONTACT: Commander, Southwest Division, Naval Facilities Engineering Command, Attn: Sheila Donovan, Code 05G.SD, 1220 Pacific HWY, San Diego, CA 92132–5190, telephone (619)–532–1253.

SUPPLEMENTARY INFORMATION: The text of the entire Record of Decision (ROD) is provided as follows:

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.;* the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508); and Department of the Navy regulations (32 CFR part 775); the Department of the Navy announces its decision to construct up to 1,600 MFH units and supporting infrastructure at MCAS Miramar. This decision implements the preferred alternative identified in the FEIS for Military Family Housing in the San Diego Region.

The purpose of the project is to provide suitable, affordable housing units for enlisted military personnel and their families in reasonable proximity to the installations where they are assigned. The projected MFH shortfall for the San Diego region is 2,870 units by 2007. Additional suitable, affordable MFH for enlisted military families is, therefore, required.

The availability of suitable, affordable MFH for enlisted military families will make a positive contribution to their quality of life. This improved quality of life and subsequent increase in morale, job satisfaction, and enlisted service retention rates ultimately have a direct, positive impact on the DON's combat readiness and mission capabilities. Therefore, the provision of suitable, affordable MFH will support the mission of local Navy and Marine Corps commands. The Proposed Action will not completely eliminate the existing and projected MFH shortfall, but it will vastly improve enlisted military family living conditions by providing up to 1,600 MFH units for enlisted military families.

The Federal action will include construction of up to 1,600 MFH units in one 264-acre development area located in the southeastern portion of MCAS Miramar near the community of Tierrasanta. The project will also provide land for two elementary schools and a community center or park within the development area. Access to the site will require an approximately 2.5 mile extension of Santo Road, involving approximately 34 acres. Existing internal roads to eastern MCAS Miramar, also known as East Miramar, will provide secondary emergency access. The extension of Santo Road will provide direct access to State Route (SR) 52 approximately one mile east of I–15. For MCAS Miramar enlisted personnel residing at the MFH, access to MCAS Miramar Main Station gates will be via I–15 to Miramar Road or Miramar Way.

The Proposed Action will be implemented through DON's Public-Private Venture (PPV) housing program, a program authorized by law, to give the Department of Defense (DOD) the authority to employ a variety of private sector approaches to build or renovate MFH using private capital to leverage government funds. Using the PPV approach for the Proposed Action, DON will lease land to a private sector developer who will build, own, operate, and maintain the MFH. The developer will, in turn, rent the MFH to enlisted military families at rental rates at or

below each service member's Basic Allowance for Housing (BAH). The private sector developer will contribute the majority of upfront development costs and will fund all ongoing operations and maintenance of the homes. With government oversight, the PPV entity will provide most of the environmental mitigation required by the FEIS.

Alternatives Considered: A screening process, based upon criteria set forth in the Environmental Impact Statement (EIS), identified a reasonable range of alternatives that would satisfy the Navy's purpose and need. Three alternatives and the no action alternative were analyzed in detail in the EIS.

The preferred alternative is Site 8A, the least environmentally sensitive of the three sites. Site 8A will provide more MFH units than either of the two other alternatives considered. This alternative provides for construction of up to 1,600 units comprised of 282 buildings including two-story duplexes, fourplexes, sixplexes, and eightplexes. Up to 188 MFH units will meet the Americans with Disability Act standards. Land for two elementary schools and a community center or park will be located in the development area, along with other recreational facilities to include tot lots, play lots, basketball and sports courts, picnic/barbecue areas, and ball fields. Construction will be phased over a 4-year period, with each phase constructing approximately 25 percent of the total MFH units.

Alternative 8B is a variant of Site 8A, differing only with regard to the access route. Alternative 8B would require construction of a new interchange with SR–52 directly south of the developed area, in addition to a utility corridor along the route of Site 8A's 2.5 mile road between the developed area and the existing Santo Road interchange.

The Site 2 alternative includes 283 acres and would include development of up to 1,000 MFH units in the northwest corner of East Miramar. The location consists of three land parcels connected by a ridge-top road. Site 2 would include land for a school and other site amenities. Access to Site 2 would be via Pomerado Road, one of the main access roads in the area.

Under the Site 3 alternative, up to 1,246 MFH units would be located on 208 acres on East Miramar. Site 3 would include land for a school site and other site amenities. Site 3 would be accessed by a two-mile extension of Miramar Way from its current terminus just east of I–15.

Implementation of the no action alternative would result in no MFH construction. Consequently, the purpose of the Proposed Action, to provide additional suitable, affordable MFH for enlisted military families in the San Diego region, would not be met. The no action alternative is the environmentally preferred alternative because it does not involve any change to the physical environment.

Environmental Impacts: The DON prepared an EIS to evaluate the potential environmental impacts associated with implementation of each of the alternatives for the following environmental resource areas: land use; socioeconomics/environmental justice; utilities; public services; cultural resources; biological resources; soils and geology; water resources; hazardous wastes, substances, and materials; traffic/circulation; air quality; noise; and, public safety/environmental health and safety risks to children. Chapter 4 of the FEIS provides a detailed discussion of impacts and mitigation measures.

The preferred alternative, Site 8A, presents no significant impacts to land use, socioeconomics/environmental justice, hazardous wastes, substances and materials, air quality, and noise; thus, no mitigation measures are offered in those areas. Implementation of the preferred alternative will result in impacts on several resources at MCAS Miramar, but the DON and the PPV entity building the project and responsible for MFH operation will implement mitigation measures to ensure that impacts are not significant.

Site 8A is part of an operational range. Because MFH is incompatible with use of Site 8A as an operational range, the portion of the operational range that will comprise the MFH footprint and its surrounding safety buffer zone will be closed. The closed portions of the operational range will undergo a munitions response following the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.* and the National Contingency Plan, 40 CFR part 300. Once the munitions response is complete, Site 8A land use will be compatible with MFH.

Absent mitigation, the preferred alternative would impact utilities, as several downstream sections of the sewer lines cannot accommodate the development. Development of Site 8A will result in an increased demand for fire and police services at MCAS Miramar.

The military families within MFH on Site 8A will add approximately 1,175 elementary students, 231 middle school students, and 164 high school students to the area. Based on the number of elementary school students projected for Site 8A, the MFH will create a need for the equivalent of two elementary schools.

One archaeological site, a sparse lithic scatter, will be impacted by the development of Site 8A. The DON initiated consultation with the State Historic Preservation Officer (SHPO) on December 9, 1999, and executed the SHPO's established testing plan for sparse lithic scatters. The Cedar Fire of October 26, 2003, revealed that two sparse lithic scatters in the area are actually one large lithic scatter, requiring modification of the testing plan. The DON submitted the amended plan to the SHPO on March 9, 2004, and the test results on April 15, 2004. The SHPO concurred with DON's conclusion that the site is not eligible for listing on the National Register of Historic Places (NRHP). Some areas on Site 8A that were inaccessible prior to the October 26, 2003, fire are now accessible, and based on current discussions with the SHPO, DON will evaluate whether to survey and/or test such areas during the CERCLA munitions response. It is not anticipated that cultural resources will be impacted within the safety buffer area since the munitions response in this area is expected to be limited to surface detection and removal.

Development of the project site, including the munitions response, site grading, and construction, will have no effect on Federally listed threatened or endangered species. Absent mitigation, significant impacts to biological resources, including regionally and locally declining vegetation and habitat types (e.g., Diegan coastal sage scrub, native grasslands, vernal pools) and jurisdictional waters (e.g., freshwater seeps) of the United States would occur when the site is developed. The munitions response in the safety buffer zone could result in permanent impacts to certain sensitive resources, such as vernal pools. Temporary, indirect impacts could occur to biological resources from fugitive dust or noise generated by munitions detonation. Permanent land use controls, such as fences, could have permanent indirect impacts if they displace biological resources, or are situated in drainage courses where they will alter hydrological processes such as erosion and sedimentation.

Absent mitigation, significant impacts would occur during construction at Site 8A on roadway segments between Miramar Way and I–15 northbound and Kearny Villa Road northbound. Impacts to the following intersections would

occur: Kearny Villa Road southbound/Miramar Way; Kearny Villa Road northbound/Miramar Way; 1–15 southbound ramps/Miramar Way; and, Santo Road/SR–52 eastbound and westbound ramps as well as the existing bridge. Absent mitigation, the completed project would significantly impact Miramar Way/I–15 northbound ramps to Kearny Villa Road northbound ramps.

Munitions and Explosives of Concern (MEC), if not mitigated, would pose a potential for significant public safety impacts during both the construction and occupancy phases of the project. During construction, site workers could come into contact with MEC. During occupancy, housing residents could encounter and unintentionally detonate MEC located on the project footprint and in the safety buffer zone. Children within the MFH site could be exposed to potential risks associated with MEC.

Mitigation: Unless otherwise specified, mitigation measures identified in the FEIS will be the responsibility of the PPV entity, and such measures will be specified in the contractual agreements and real estate instruments governing the relationship between the PPV entity and the DON. The PPV agreement will reserve to DON the authority to oversee all mitigation actions undertaken by the PPV entity.

Several sections of the sewer lines in Santo Road south of SR–52 will be upgraded and pumping stations will be constructed on the proposed access road for those portions of the road adverse to grade, thus reducing impacts to utilities to below significance.

MCAS Miramar plans to construct an additional fire station in East Miramar in 2008. The new station will be located at Site 8A, and the existing station will remain in place. MCAS Miramar will construct a temporary fire station upon first occupancy, pending construction of the new facility. In addition, MCAS Miramar will increase staffing of the MCAS Miramar military police force. These measures will reduce impacts to police and fire services to below significance.

School impacts will be mitigated by providing approximately 13.3 acres of land to the San Diego Unified School District, the availability of Federal Impact Aid administered by the U.S. Department of Education (in addition to possessory interest taxes paid by the PPV entity to the State of California), and advanced notice to the school district of the development schedule.

At present, no mitigation will be necessary with regard to cultural resources, because the impacted site is not eligible for listing on the NRHP. If NRHP eligible sites are identified during the CERCLA munitions response, National Historic Preservation Act (NHPA) requirements will be incorporated as applicable or relevant and appropriate requirements (ARARs) under CERCLA.

Sections 6 and 7 of MCAS Miramar's Integrated Natural Resources Management Plan (INRMP) prescribe compensation ratios to mitigate habitat impacts. When applying the compensation ratios for habitat impacts, the quality of the vegetation/habitat type will be taken into consideration. When degraded vegetation/habitat types are involved, the ratios will be adjusted to achieve an equivalent compensation. A lower compensation ratio will be appropriate where high-quality habitat is being offered for impacts to a degraded habitat.

Implementation of the following measures will ensure that there will be no significant direct impacts to the Diegan coastal sage scrub and native grasslands: providing habitat compensation at a ratio of 1:1 for habitat unoccupied by listed threatened and endangered species; and compensating for disturbed habitat that is unoccupied by listed threatened and endangered species at a ratio of 0.5:1, either on MCAS Miramar or off MCAS Miramar through habitat preservation, creation, or enhancement.

Implementation of the following measures will ensure that there will be no significant direct impacts to vernal pools: Providing habitat compensation at a ratio of 2:1 (no threatened or endangered species present); avoiding work around vernal pools during the rainy season or when ground is wet (generally from November 1 to April 30); and before construction, salvaging vernal pool soil (plants, seeds, cysts, and soil) during the dry season for later use in restoration.

Provision of habitat compensation at a ratio of 2:1, either on MCAS Miramar or off MCAS Miramar through habitat preservation, creation, or enhancement, will ensure that there will be no significant direct impacts to the freshwater seeps.

The nature and extent of impacts to biological resources from the munitions response in the safety buffer zone cannot be determined before it begins. However, in addition to the measures discussed below for each resource, the PPV entity will ensure the presence of a qualified biological monitor at sensitive biological resource sites to minimize impacts during vegetation trimming and MEC excavations. At a minimum, the monitor will conduct a general survey of the munitions response site before and after cutting and excavations in order to quantify the extent of impacts. The monitor will also identify sensitive areas that should be avoided, and will identify alternative routes for equipment access and alternative times for clearance activities to avoid impacts during portions of the season when certain resources are more vulnerable to impacts.

Implementation of the following measures will ensure that there will be no significant impact to regionally rare and declining habitats in the safety buffer zone: providing habitat compensation for regionally rare and declining habitats at replacement ratios identified in Table 6 of the INRMP for permanent impacts from the construction of any land use controls; brush thinning to facilitate munitions response equipment and ensure that personnel access will not remove plant roots and that above-ground biomass will be properly disposed of or recycled for mulch; minimizing the area of impact and soil loss; and implementing passive restoration of temporary disturbance areas.

To ensure that the munitions response in the safety buffer zone is not likely to jeopardize the continued viability of any endangered or threatened species, the DON will consult, as appropriate, with U.S. Fish and Wildlife Service (USFWS). If such discussions reveal measures necessary to avoid jeopardy to a species, such measures will be implemented, and no other mitigation measures will be necessary to avoid a significant impact. In light of USFWS comments on the FEIS, as discussed below, the DON will conduct gnatcatcher surveys within one year prior to any brush thinning, grading, or ground disturbance activities in either the development footprint or in the safety buffer zone. If gnatcatchers are observed at that point, appropriate measures will be implemented in consultation with the USFWS to avoid jeopardizing the viability of the species. Similarly, vernal pools and road ruts within the development footprint will be surveyed for the presence of fairy shrimp within one year prior to initiation of grading. If, however, dry conditions prevent ponding necessary for fairy shrimp surveys, the DON will have to rely on existing survey data as the best information available for that species.

Any habitat clearing activities will be timed to avoid the breeding season of most migratory birds to the maximum extent practicable to avoid damage to active bird nests. If habitat clearing outside of the breeding season is infeasible, the DON and PPV entity will

coordinate with the USFWS to implement requirements to mitigate impacts to migratory birds.

Traffic impacts during construction and afterward will be mitigated to less than significant through the following measures: at the Miramar Way—I–15 Northbound Ramps to Kearny Villa Road, the PPV entity will provide a fair-share contribution toward the re-striping of Miramar Way, between the I–15 northbound ramps and the Kearny Villa northbound ramps, to create a second westbound lane—the current width of the overpass, 40 feet, provides adequate width for this re-striping; at Kearny Villa Road Southbound Ramps/Miramar Way, the PPV entity will provide a fair-share contribution for the construction of a traffic signal; for Kearny Villa Road Northbound Ramps/Miramar Way, the PPV entity will provide a fair-share contribution for the installation of a traffic signal and construction of an exclusive right-turn lane at the Miramar Way westbound intersection approach, an improvement that will require re-striping of the Miramar Way westbound intersection approach; for I–15 Southbound Ramps/Miramar Way, the PPV entity will provide a fair-share contribution for the construction of a traffic signal at this intersection (meets California Department of Transportation (CALTRANS) Warrant #2, ''Interruption of Continuous Traffic''); a second through-lane at the Miramar Way westbound approach will also be recommended, which is consistent with the roadway re-striping necessary on the Miramar Way overpass; and for Santo Road/SR–52 Eastbound Ramps, the PPV entity will provide a traffic signal, an improvement required in association with the widening of the Santo Road bridge and resulting in a situation that with signalization, the intersection will operate at Level of Service (LOS) A during the AM peak hour and LOS B during the PM peak hour. For Santo Road/SR 52 Westbound ramps, the PPV entity will provide the following improvements required in order to provide access to and from Site 8A: installing a traffic signal; widening the Santo Road bridge over SR 52 by 12 feet to accommodate a southbound left-turn lane; adding a northbound right-turn lane; adding a lane on the off-ramp; and adding an east leg (access to/from Site 8A). With all these improvements, these intersections will operate at an acceptable LOS and project-related impacts will be reduced to levels below significance.

The following specific procedures will be implemented during the munitions response and in subsequent construction design and operation on the site footprint. These measures will include: Soil excavation for the footprint of Site 8A, including the 100-foot (30.5-meter) firebreak around the perimeter of the housing site; the development and implementation of an Environmental Protection Plan (EPP) and Explosive Safety Submission (ESS) to ensure environmental mitigation commitments are being met and explosive safety hazards minimized; and survey and clearance from the development footprint of any brush remaining after the October 2003 wildfire, including brush clearance on areas with slopes under 30 percent to accommodate towed and man portable detection equipment and brush clearance on areas greater than 30 percent slope to create lanes sufficiently wide to accommodate movement of personnel and hand-held magnetometers. The munitions response within the developable footprint of Site 8A will be an iterative process of excavation and magnetometer use, with an anticipated excavation depth to 3 feet (1 meter).

The munitions response within the footprint of Site 8A, including the 100-foot (30.5) firebreak, will follow CERCLA and the National Contingency Plan with oversight by the PPV entity's quality control officer and by the government. The munitions response will also follow DOD and DON policies regarding munitions response.

All surface and subsurface anomalies within the developable footprint of Site 8A will be located and geo-referenced for reacquisition during the munitions response. Any MEC not previously detected within the developable footprint of Site 8A will be identified visually by qualified Unexploded Ordnance (UXO) technicians during this munitions response and any follow-on site preparation.

At a minimum, the upper 3-foot (1-meter) layer of soil within the developable footprint of Site 8A will be characterized and ultimately placed in a canyon. The detection and response to MEC and excavation to 3 feet of soil will be repeated until no MEC is detected. The specific requirements for any characterization, removal, and disposal of soil from the munitions response site will be identified under CERCLA, but the process will at minimum include the following: Excavated soil will be placed as fill over soil previously cleared of MEC, serving as a cap that will not be less than 3 feet (1 meter) deep; ground cover or soil stabilization measures will be employed over any filled areas in the canyon to minimize erosion; qualified UXO technicians will oversee the soil excavation, filling, and site infrastructure and foundation work; and without additional fill, excavation will over-excavate soil at least 3 feet (1 meter) below any MEC response.

A safety buffer zone will be established around the MFH perimeter. The safety buffer zone will be identified, in part, based on range usage in range fans associated with historical training at the former Camp Elliott, which overlap Site 8A and extend off-site within station boundaries. The size of the safety buffer zone will be based on the MEC encountered and the safe distances prescribed in Explosive Ordnance Disposal (EOD) Publication 60A–1–1–4, Table 2–4.

It is anticipated that the following site-specific procedures will be implemented during the munitions response for the Site 8A safety buffer zone: development and implementation of an EPP and ESS to ensure environmental mitigation commitments are being met and explosive safety hazards minimized; survey of the entire safety buffer zone prior to the detector-aided surface munitions response; selective trimming of vegetation where necessary to facilitate the munitions response; and if necessary, brush clearance within the buffer areas will include trimming of the brush within identified access lanes to accommodate the use of man-portable detection equipment, and provide for emergency egress, with special field procedures used for sites having greater than 30 percent slope. The munitions response will include detector-aided visual acquisition and response to surface MEC and range debris. The munitions response within the safety buffer zone will follow CERCLA, the National Contingency Plan, DOD, and DON policies with oversight by the PPV entity's quality control officer and by the government.

It is anticipated that land use controls, including legal mechanisms, engineering controls, and educational programs will be part of the remedy selected in the munitions response. The site-specific land use controls that may be employed at the selected site and surrounding safety buffer zone will be tailored to the munitions response and may include the following: Legal mechanisms, such as an amendment to the installation master plan; engineering controls, including fences, warning signage and landscaping; and educational programs, including rental notices, educational materials, and annual MEC awareness programs for MFH management personnel.

For the Site 8A safety buffer zone perimeter, an 8-foot high containment

fence or other appropriate engineering control will be constructed at the far extent of the 100-foot (30.5-meter) firebreak and the beginning of the safety buffer zone. A fence or other appropriate engineering control will be provided around the exterior of the permanent safety buffer perimeter.

Every fifth year, a review required by CERCLA, 42 U.S.C. 9621(c) will be conducted to assess the selected remedy's protectiveness. This will include a review of the continued effectiveness of land use controls. This five-year review will also include a limited visual inspection for the presence of any MEC within the munitions response site as well as soil erosion/stability. Depending on the CERCLA process, this five-year review may also entail a survey of housing residents to validate awareness training and other educational programs, and a review of any recorded EOD responses by MCAS Miramar personnel.

The preferred alternative presents no other significant impacts that cannot be mitigated.

Response to Comments Received Regarding the Final Environmental Impact Statement: The FEIS was distributed to government agencies and the public on June 25, 2004, for a 30-day public review period. The DON received comments on the FEIS from one Federal agency, one state agency, two cities, one school district, one city water department, and one community planning agency. The comments identified concerns related to school impacts, traffic impacts, fire safety, water use, visual resources, and consistency with city planning requirements. Many of these comments simply stated support for or opposition to the preferred alternative. Others reiterated comments that were received on the DEIS and responded to in the FEIS. Comments of general support or opposition are not addressed in the ROD. Comments restating issues previously raised are not addressed in the ROD because they were addressed in the FEIS and responses to comments on the DEIS. New issues raised in comments received during the 30-day public review period are addressed below.

The City of San Diego urges the DON to consider using recycled water on the project. The DON is committed to following applicable Federal law and executive orders regarding recycling water and other products, including Executive Order 13101, Greening the Government through Waste Prevention, Recycling and Federal Acquisition (1998) and Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities (1994).

The City of San Diego commented that the FEIS should meet California Environmental Quality Act (CEQA) standards as well as NEPA requirements, and that it should propose mitigation consistent with city standards for impacts that may result from any city actions. The city did not identify what those actions would be. Regardless, this Federal action is not subject to CEQA, and therefore, mitigation for any city actions would be beyond the scope of this FEIS.

CALTRANS commented that state-owned signalized intersections must be analyzed by using Intersecting Lane Vehicle (ILV) calculations per the Highway Design Manual. Highway Capacity Software (HCS), which the DON used to evaluate all signalized intersections, is an accepted methodology per the CALTRANS Guide for Preparation of Traffic Impact Studies (January 2001). CALTRANS also commented on differences between traffic counts performed by the DON and those performed by CALTRANS during 2001. The differences in the numbers are expected, however, because they reflect the collection of different data. The DON counted traffic at all intersections during a given peak hour period in order to accurately determine total traffic impacts during any specified period. CALTRANS conducted separate counts of separate intersections at separate peak hour times for each intersection, the sum of which does not reflect total traffic impacts at any particular point in time. The DON's traffic analysis accurately projects traffic impacts from the development of Site 8A.

The Tierrasanta Community Council commented that the traffic study underestimates the traffic impacts on Santo Road, Clairemont Mesa Boulevard, and Tierrasanta Boulevard associated with commuters avoiding congested freeways. The DON's traffic impact analysis considered a number of factors in developing traffic distribution patterns for Site 8A, including modeled traffic assignments, travel time studies on freeways and surface routes, and community input. The projected traffic distribution patterns reflect the expert professional judgment of the DON's traffic engineer.

The City of Santee commented that the FEIS must study impacts associated with projected closure of the Miramar Landfill, which the City of Santee estimates at 2010. Solid waste generated by 1,600 families will not significantly accelerate the date at which the landfill reaches capacity. Once the landfill reaches capacity, the impacts to MFH will be the same as the impacts to the rest of the City of San Diego. Analysis of future landfill options at this point would be speculative and beyond the scope of the FEIS.

The USFWS commented that, in light of the expected period between the ROD and the beginning of grading construction activities, any such activities should be preceded by timely protocol level surveys for the California gnatcatcher and the San Diego fairy shrimp. As discussed in the mitigation section above, the DON will conduct such surveys as part of the CERCLA munitions response. If, however, dry conditions prevent ponding necessary for fairy shrimp surveys, the DON will necessarily rely on existing survey data as the best information available for that species.

The USFWS further commented that the DON should mitigate for the loss of gnatcatcher habitat as if any pre-fire occupied habitat remained so occupied. The USFWS points to statements in the FEIS regarding mitigation assuming pre-fire conditions. The FEIS makes clear, however, that the DON will not assume that occupied territories destroyed by the Cedar Fire remain occupied.

The DON assumes vegetation will grow back if no development occurs. The DON does not assume previously occupied gnatcatcher territories will again become occupied, because the gnatcatchers that previously occupied any such territories were either killed or displaced by the Cedar Fire. Pre-construction gnatcatcher surveys will identify whether and where any gnatcatcher reoccupations have occurred at that point. Loss of actual occupied gnatcatcher habitat, if any, will be mitigated according to the ratio for occupied habitat in the INRMP.

Conclusions: After carefully considering the purpose and need for the proposed action, the analysis contained in the EIS, and the comments received on the EIS from Federal, state, and local agencies, non-governmental organizations, and individual members of the public, I have determined that the preferred alternative, Site 8A, will best meet the needs of the DON for the following reasons:

—It best addresses the critical shortage of MFH in the San Diego area, especially given the limited availability of sites that meet Navy criteria and which could accommodate the number of housing units envisioned in the proposed action.

—It is environmentally preferred to the Site 8B, Site 2, and Site 3 alternatives.

—Significant impacts caused by the proposed action can be mitigated. Most mitigation measures can be accomplished by the PPV entity with appropriate DON oversight.
—Sufficient actions, through CERCLA compliance, land use controls, and site clearance, will be taken to minimize the potential threat posed by the presence of MEC to construction personnel, housing residents, and members of surrounding communities.

Dated: August 12, 2004.

Wayne Arny,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

[FR Doc. 04–19157 Filed 8–19–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Global Dosimetry Solutions, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Global Dosimetry Solutions, Inc., a revocable, nonassignable, exclusive license to practice in the field of real time monitoring of the radiation dose rate and the immediate and/or cumulative radiation dose delivered to the skin (entrance and exit) of human medical patients during radiation therapy and other medical procedures, and real time in vivo monitoring of the radiation dose rate and the immediate or cumulative radiation dose delivered inside of human medical patients during radiation therapy and other medical procedures in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent 5,811,822 entitled Optically Transparent, Optically Stimulable Glass Composites for Radiation Dosimetry, Navy Case No. 77,637 and U.S. Patent No. 6,087,666 entitled Optically Stimulated Luminescent Fiber Optic Radiation Dosimeter, Navy Case No. 78,583.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than September 7, 2004.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Ms. Jane F. Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–3083. Due to U.S. Postal delays, please fax (202) 404–7920, e-mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: August 16, 2004.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 04–19106 Filed 8–19–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Soilworks, L.L.C.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Soilworks, L.L.C. a revocable, nonassignable, exclusive license to practice in the fields of dust control on and around helipads and commercial construction sites in the United States and certain foreign countries, the Government-owned invention described in U.S. Patent Application Serial No. 10/778,707, entitled ''Formulation for Dust Abatement and Prevention of Erosion'', Navy Case No. 84,722.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than September 7, 2004.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Ms. Jane F. Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–3083. Due to U.S. Postal delays, please fax (202) 404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: August 16, 2004.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 04–19107 Filed 8–19–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Department of Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

DATES: Thursday, September 16, 2004. *Time:* 8:30 a.m.–12 p.m.

ADDRESSES: The Board will meet at the Hyatt Regency Washington Hotel, 400 New Jersey Avenue, NW., Washington, DC 20001. Phone: (202) 737–1234, Fax: (202) 393–7927.

FOR FURTHER INFORMATION CONTACT: Dr. Leonard Dawson, Deputy Counselor, White House Initiative on Historically Black Colleges and Universities, 1990 K Street, NW., Washington, DC 20006; telephone: (202) 502–7889, fax: (202) 502–7879.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established under Executive Order 13256, dated February 12, 2002 and Executive Order 13316 of September 17, 2003. The Board is established (a) to report to the President annually on the results of the participation of Historically Black Colleges and Universities (HBCUs) in Federal programs, including recommendations on how to increase the private sector role, including the role of private foundations, in strengthening these institutions, with particular emphasis on enhancing institutional planning and development, strengthening fiscal stability and financial management, and improving institutional infrastructure, including the use of technology, to ensure the long-term viability and enhancement of these institutions; (b) to advise the

President and the Secretary of Education (Secretary) on the needs of HBCUs in the areas of infrastructure, academic programs, and faculty and institutional development; (c) to advise the Secretary in the preparation of an annual Federal plan for assistance to HBCUs in increasing their capacity to participate in Federal programs; (d) to provide the President with an annual progress report on enhancing the capacity of HBCUs to serve their students; and (e) to develop, in consultation with the Department of Education and other Federal agencies, a private sector strategy to assist HBCUs.

The purpose of the meeting is to review and approve the Board's 2002–2003 Annual Report and to discuss other items pertinent to the Board and the nation's HBCUs.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify ReShone Moore at (202) 502–7893, no later than Thursday, September 2, 2004. We will attempt to meet requests for accommodations after this date, but, cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on Thursday, September 16, 2004, between 11 a.m.–12 p.m. Those members of the public interested in submitting written comments may do so at the address indicated above by Thursday, September 9, 2004.

Records are kept of all Board proceedings and are available for public inspection at the Office of the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006, during the hours of 8 a.m. to 5 p.m.

Rod Paige,

Secretary of Education, U.S. Department of Education.

[FR Doc. 04–19071 Filed 8–19–04; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Office of Management; Membership Notice

AGENCY: Department of Education.

ACTION: Notice of Membership of the Performance Review Board.

SUMMARY: The Secretary announces the members of the Performance Review Board (PRB) for the Department of Education for the Senior Executive Service (SES) performance cycle that ended June 30, 2004. Under 5 U.S.C. 4314(c)(1) through (5), each agency is required to establish one or more PRBs.

Composition and Duties

The PRB of the Department of Education for 2004 is composed of career senior executives and Presidential appointees.

The PRB reviews and evaluates the initial appraisal of each senior executive's performance, along with any comments by that senior executive and by any higher-level executive or executives. The PRB makes recommendations to the appointing authority relative to the performance of the senior executive, including recommendations on performance awards. The Department of Education's PRB also makes recommendations on SES pay adjustments for career senior executives.

Membership

The Secretary has selected the following executives of the Department of Education to serve on the PRB of the Department of Education for the specified SES performance cycle: Chair: William Leidinger, John Higgins, Jack Martin, Sally Stroup, Patricia Guard, Gary Hopkins, Jeanette Lim, Philip Link, Thomas Skelly, Ricky Takai, Veronica Trietsch, and Steven Winnick.

FOR FURTHER INFORMATION CONTACT: Althea Watson, Director, Executive Resources Team, Human Resources Services, Office of Management, U.S. Department of Education, room 2E124, FOB–6, 400 Maryland Avenue, SW., Washington, DC 20202–4573. Telephone: (202) 401–2548.

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 under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: July 13, 2004.

Rod Paige,

Secretary of Education.

[FR Doc. 04–19177 Filed 8–19–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–260–A]

Application To Export Electric Energy; EPCOR Merchant and Capital (US) Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: EPCOR Merchant and Capital (US) Inc. (EMC) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before September 20, 2004.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On April 8, 2002, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–260 authorizing EMC to transmit electric energy from the United States to Canada as a power marketer using existing international electric transmission facilities. That two-year authorization expired on April 8, 2004.

On July 8, 2004, FE received an application from EMC to renew its authorization to transmit electric energy from the United States to Canada. DOE requests that this renewal be issued for a five-year term. EMC is a Delaware

corporation with its principal place of business in Calgary, Alberta, Canada. EMC is an indirect, wholly-owned subsidiary of EPCORE Utilities Inc. of Edmonton, Alberta, Canada. EMC is a power marketer that does not own or control any electric generation or transmission facilities nor does it have a franchised service territory in the United States.

In FE Docket No. EA–260–A, EMC proposes to export electric energy to Canada and to arrange for the delivery of those exports over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by EMC, as more fully described in its application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the EMC applications to export electric energy to Canada should be clearly marked with Docket EA–260–A. Additional copies are to be filed directly with Riaz Jessa, Transaction Accounting Assistant, EPCOR Merchant and Capital (US) Inc., EPCOR Place, 8th Floor, 505—2nd Street, SW., Calgary, Alberta T2P 1N8, Canada and Sandra E. Rizzo, Esq., Preston Gates Ellis, & Rouvelas Meeds, LLP, 1735 New York Avenue, NW., Suite 500, Washington, DC 20006.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy home page at *http://www.fe.doe.gov.* Upon reaching the Fossil Energy home page, select ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on August 16, 2004.

Ellen Russell,

Acting Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 04–19123 Filed 8–19–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC04–519–000, FERC–519]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

August 13, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by October 12, 2004.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC04–519–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments are 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, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information is collected under the requirements of FERC–519 ''Application for Sale, Lease or Disposition, Merger or Consolidation of Facilities or for Purchase or Acquisition of Securities'' (OMB No. 1902–0082). The information is used by the Commission to implement the statutory provisions of the Section 203 of the Federal Power Act (FPA), 16 U.S.C. 824b. Section 203 authorizes the Commission to grant approval for transactions in which a public utility disposes of jurisdictional facilities, merges such facilities with the facilities owned by another person or acquires the securities of another public utility. Under this statute, the Commission must find that the proposed transaction will be consistent with the public interest. Section 318 exempts certain persons from the requirements of Section 203 which would otherwise concurrently apply under the Public Utility Holding Company Act of 1935.

Under Section 203 of the FPA, FERC must review proposed mergers, acquisitions and dispositions of jurisdictional facilities by public utilities, if the value of the facilities exceeds $50,000, and must approve these transactions if they are consistent with the public interest. Today, one of FERC's overarching goals is to promote competition in wholesale power markets, having determined that effective competition, as opposed to traditional forms of price regulation, can best protect the interests of ratepayers. Market power, however, can be exercised to the detriment of effective competition and customers. Therefore, FERC regulates transmission service, mergers and wholesale rates so as to prevent the exercise of market power in bulk power markets. The Commission

implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 33.

Action: The Commission is requesting a three-year approval of these reporting requirements, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent* (2)	Average burden hours per response # (3)	Total annual burden hours (1)x(2)x(3)
134	1	395	52,930

*The Commission anticipates that over the next three years it will receive on average per year the following number of filings: merger applications (2); disposition of facilities (109); corporate restructuring (20); and acquisition of securities (3).

The Commission has estimated that it takes on average anywhere from 91 hours to 12,557 hours to comply with the requirements of Part 33 and encompasses non-merger transactions i.e. divestiture of assets, acquisition of securities; simple merger applications where no competitive concerns are raised to complex merger applications were horizontal competitive concerns are raised and there is a need for extensive analysis.

Estimated cost burden to respondents: 52,930 hours / 2,080 hours per year × $107,185 per year = $2,727,549.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including:

(1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1861 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC04–574–000; FERC–574]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

August 16, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by October 15, 2004.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–30, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC04–574–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's home page using the eLibrary link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–574 ''Gas Pipeline Certificates: Hinshaw Exemption'' (OMB No. 1902–0116) is used by the Commission to implement the statutory provisions of sections 1(c), 4 and 7 of the Natural Gas Act (NGA) (Pub. L. 75–688) (15 U.S.C. 717–717w). Natural gas pipeline companies file applications with the Commission furnishing information in order for a determination to be made as to whether the applicant qualifies for an exemption under the provisions of the Natural Gas Act (section 1(c)). If the exemption is granted, the pipeline is not required to file certificate applications, rate schedules, or any other applications or forms prescribed by the Commission.

The exemption applies to companies engaged in the transportation or sale for resale of natural gas in interstate

commerce if: (a) It receives gas at or within the boundaries of the state from another person; (b) such gas is transported, sold, consumed within such state; (c) the rates, service and facilities of such company are subject to regulation by a State Commission. The data required to be filed by pipeline companies for an exemption is specified by 18 Code of Federal Regulations (CFR) part 152.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
1	1	245	245

The estimated total cost to respondents is $12,625 (245 hours divided by 2,080 hours per employee per year times $107,185 per year average salary (including overhead) per employee = $12,625 (rounded off)).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1862 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC04–576–000; FERC–576]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

August 16, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by October 15, 2004.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC04–576–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the *eLibrary* link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–576 ''Report by Certain Gas Companies of Service Interruptions'' (OMB No. 1902–0004) is used by the Commission to implement the statutory provisions of Sections 4, 7, 10 and 16 of the Natural Gas Act (NGA) (Pub. L. 75–688, 52 Stat. 821–833, 15 U.S.C. 717–717w). The Commission is authorized to oversee continuity of service in the transportation of natural gas in interstate commerce. The information collected by FERC–576 notifies the Commission in a timely manner of any interruption of service or possible hazard to public health or safety.

The Commission in response to timely notification of a serious interruption may contact other pipelines to determine available supply, and if

required, authorize transportation or construction of facilities to alleviate the problem. The data collected in FERC–576 pertains to serious interruptions of service to any wholesale customer involving facilities operated under certificate authorization from the Commission. Specifically, the data collected may include: (1) Date of service interruption, (2) date of reporting the interruption to the Commission, (3) the location, (4) brief description of facility involved and cause of interruption, (5) customers affected, (6) duration of the interruption, and (7) volumes of gas interrupted.

These data are required by the Commission to provide timely information concerning interruptions to wholesale service. The reporting of these interruptions will assist the Commission and the natural gas industry in fulfilling their obligations to the public to provide better service through increased efficiency and reliability. The data required to be filed for notification of interruptions is specified by 18 Code of Federal Regulations (CFR) 260.9.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
22	1	1	22

The estimated total cost to respondents is $1,133 (22 hours divided by 2,080 hours per employee per year times $107,185 per year average salary (including overhead) per employee = $1,133 (rounded off)). The cost per respondent is equal to $52.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1863 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC04–523–000, FERC–523]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

August 13, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specifics of the information collection described below.

DATES: Comments on the collection of information are due by October 12, 2004.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC04–523–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at (202) 502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the *eLibrary* link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–523 ''Applications for Authorization of Issuance of Securities'' (OMB Control

No. 1902–0043) is used by the Commission to implement the statutory provisions of sections 19, 20, and 204 of the Federal Power Act (FPA), 16 U.S.C. 792–828c. Under the FPA, a public utility or licensee must obtain Commission authorization for the issuance of securities or for the assumption of liabilities as a guarantor, indorser, or surety or otherwise in respect to any other security of another person, unless and until they have submitted an application to the Commission. After review and approval the Commission will in turn issue an order authorizing the assumption of the liability or the issuance of securities. The information filed in applications to the Commission is used to determine the Commission's acceptance and/or rejection for granting authorizations for either the issuance of securities or the assumption of obligations or liabilities to licensees and public utilities.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR parts 20, 34, 131.43, and 131.50.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
60	1	110	6,600

Estimated cost burden to respondents: 6,600 hours / 2,080 hours per year × $107,185 per year = $340,106. The cost per respondent is equal to $ 5,668.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.,* permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1872 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–393–000]

ANR Pipeline Company; Notice of Application

August 16, 2004.

Take notice that ANR Pipeline Company (ANR), Nine E. Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP04–393–000 on August 9, 2004, an application pursuant to section 7(b) and 7(c) of the Natural Gas Act (NGA) and the Commission's Regulations, for any and all authorizations for ANR to acquire the Battle Creek Pipeline and for the abandonment of the associated lease agreement (Lease) between ANR and ANR Western Storage Company (ANR Western) to lease these same facilities. Upon ANR's acquisition of the Battle Creek Pipeline and abandonment of the Lease, ANR Western will merge with its parent company, ANR Storage Company. ANR states that the total acquisition costs for the Battle Creek Pipeline are proposed to be approximately $12.1 million, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web 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 FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or *TTY, contact (202) 502–8659.*

Any questions regarding this application should be directed to Jacques Hodges, Tennessee Pipeline Company, Nine E. Greenway Plaza, Houston, Texas 77046, or call (832) 676–5509, fax (832) 676–2251.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to

participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: September 7, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1867 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–450–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 12, 2004.

Take notice that on August 9, 2004, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective on October 1, 2004.

Thirteenth Revised Sheet No. 4
Twelfth Revised Sheet No. 5
Twelfth Revised Sheet No. 6

ESNG states that the purpose of this instant filing is to reflect the current FERC Annual Charges Unit Charge rate authorized by the Commission for the year 2004.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1855 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–387–000]

Florida Gas Transmission Company; Notice of Extension of Time

August 16, 2004.

On August 13, 2004, Florida Gas Transmission Company (FGT) filed a motion for an extension of time for the implementation of the within-the-path capacity allocation and the outside-the-path segmentation requirements (637 requirements) of the Commission's Order issued February 18, 2004, in the above-docketed proceeding. FGT filed a Settlement Agreement (Settlement) in Docket No. RP04–12–000 contemporaneously with this extension request. In its motion, FGT states that an integral part of this Settlement consists of the Settling Parties Agreement on the specific, detailed terms and conditions for the implementation of the within-the-path priority and outside-the-path segmenting. FGT also states that unless the Commission grants additional time for FGT to implement the 637 requirements, FGT will either be required to implement its own version of the 637 requirements or to implement a portion of the Settlement's provisions prior to its approval by the Commission and prior to the Settlement's effective date. The motion further states that FGT is authorized to state that all active parties support the request for more time.

Upon consideration, notice is hereby given that an extension of time for FGT to comply with the Commission's February 18, 2004 Order is granted to and including 30 days after the Commission acts on the Settlement filed in Docket No. RP04–12–000.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1860 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–031]

Gulfstream Natural Gas System, L.LC.; Notice of Negotiated Rate

August 13, 2004.

Take notice that on June 2, 2004, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing an executed service agreement and related

negotiated rate letter agreement in compliance with the Commission's order issued May 26, 2004.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested State commissions, as well as all parties on the official service list compiled by the Secretary of the Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1869 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.TS04–275–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Filing

August 16, 2004.

On August 5, 2004, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) filed a revised plan and schedule for implementation of the standards of conduct. Maritimes states that the revised plan is identical to the plan submitted by Maritimes on February 9, 2004, except with respect to modifications that reflect changes in the relationship between Mobil Midstream Natural Gas Investments Inc. and Maritimes and updates for Order Nos. 2004–A and 2004–B.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern standard time on August 26, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1859 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–365–001]

MIGC, Inc.; Notice of Tariff Filing

August 12, 2004.

Take notice that on August 10, 2004, MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Eighth Revised Sheet No. 6, with a proposed effective date of August 1, 2004.

MIGC states that the purpose of the filing is to revise and update the fuel retention and loss percentage factors (FL&U factors) set forth in its FERC Gas Tariff, First Revised Volume No. 1, in accordance with the requirements of section 25 of said tariff.

MIGC states that copies of its filing are being mailed to its jurisdictional customers and interested State commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211) Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1853 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–448–000]

North Baja Pipeline, LLC; Notice of Tariff Filing

August 12, 2004.

Take notice that, on August 5, 2004, North Baja Pipeline, LLC (NBP) submitted a cost and revenue study to comply with the Commission's order issued on January 16, 2002, in Docket No. CP01–22–000, *et al.*, 98 FERCA ¶ 61,020.

NBP states that copies of the filing were served on parties on the official service list in RP04–448–000.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1854 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–451–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 12, 2004.

Take notice that on August 9, 2004, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in the filing, to become effective September 8, 2004.

Northern Border states that it is filing the revised tariff sheets to (1) incorporate housekeeping changes, (2) add a form of Electronic Communication Agreement, (3) add a form of Agency Authorization Agreement and (4) add an ''Agency'' provision to the General Terms and Conditions of its FERC Gas Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1846 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–47–000; Docket Nos. CP04–38–000; CP04–39–000; and CP04–40–000]

Sabine Pass LNG, L.P, Cheniere Sabine Pass Pipeline Company; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Sabine Pass LNG and Pipeline Project

August 12, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft Environmental Impact Statement (EIS) on the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities in Cameron Parish, Louisiana proposed by Sabine Pass LNG, L.P. and Cheniere Sabine Pass Pipeline Company (collectively referred to as Cheniere Sabine) in the above-referenced dockets.

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the proposed project with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The draft EIS also evaluates alternatives to the proposal, including system alternatives,

alternative sites for the LNG import terminal, and pipeline alternatives.

Cheniere Sabine's proposed facilities would transport an average of 2.6 billion cubic feet per day (Bcfd) of imported natural gas to the U.S. market. In order to provide LNG import, storage, and pipeline transportation services, Cheniere Sabine requests Commission authorization to construct, install, and operate an LNG terminal and natural gas pipeline facilities.

The draft EIS addresses the potential environmental effects of the construction and operation of the following LNG terminal and natural gas pipeline facilities:

- A new marine terminal basin connected to the Sabine Pass Channel that would include a ship maneuvering area and two protected berths to unload up to 300 LNG ships per year with a ship capacity ranging up to 250,000 cubic meters (m^3) of LNG;
- Three all-metal, double-walled, single containment, top-entry LNG storage tanks, each with a nominal working volume of approximately 160,000 m^3 (1,006,400 barrels) and each with secondary containment dikes to contain 110 percent of the gross tank volume;
- Sixteen high-pressure submerged combustion vaporizers with a capacity of approximately 180 million cubic feet per day, as well as other associated vaporization equipment;
- Instrumentation and safety systems, including hazard detection and fire response systems, ancillary utilities, buildings, and service facilities, including a metering facility;
- Packaged natural gas turbine/generator sets to generate power for the LNG terminal; and
- Approximately 16 miles of 42-inch-diameter natural gas pipeline, two metering stations, and associated pipeline facilities including launcher and receiver facilities.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. 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 comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Reference Docket Nos. CP04–38–000 *et al.* and CP04–47–000;
- Label one copy of the comments for the attention of Gas Branch 2, PJ11.2; and
- Mail your comments so that they will be received in Washington, DC on or before October 5, 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 the project. However, the Commission strongly encourages electronic filing of any comments or interventions to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created online.

In addition to or in lieu of sending written comments, we invite you to attend the public comment meeting we will conduct in the project area. The location and time for this meeting is listed below: September 21, 2004, 7 p.m., Johnsons Bayou Community Center, 5556 Gulf Beach Highway, Johnsons Bayou, LA 70631, Telephone: 337–569–2815.

This meeting will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. Transcripts of the meetings will be prepared.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies are available from the Public Reference Room identified above. In addition, copies of the draft EIS have been mailed to federal, state, and local agencies; public interest groups; individuals and affected landowners who requested a copy of the draft EIS; libraries; newspapers; and parties to this proceeding.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Click on the ''eLibrary'' link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, with ''eLibrary,'' the ''eLibrary'' helpline can be reached at 1–866–208–3676, for TTY, contact (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The ''eLibrary'' link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you 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.*

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1856 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

[1] 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 No. RP04-354-001]

Texas Gas Transmission, LLC; Notice of Compliance Filing

August 12, 2004.

Take notice that, on August 9, 2004, Texas Gas Transmission, LLC (Texas Gas) submitted a compliance filing pursuant to a letter order issued July 28, 2004, in Docket No. RP04–354–000.

Texas Gas states that the purpose of this filing is to submit additional revised tariff sheets to remove all remaining references to the Gas Research Institute Surcharge from Texas Gas' tariff, as ordered by the Commission.

Texas Gas states that copies of this filing are being mailed to all parties on the service list in this docket, to Texas Gas's official service list, to Texas Gas's jurisdictional customers, and to interested State commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1852 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2816–030]

Vermont Electric Generation & Transmission Cooperative, Inc., North Hartland, LLC; Notice Rejecting Request for Rehearing

August 13, 2004.

1. On June 22, 2004, the Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, issued an order which granted an extension of time to North Hartland, LLC (North Hartland) to submit copies of the instruments of conveyance as required by the order approving transfer of the North Hartland Project No. 2816 to North Hartland. On July 15, 2004, the Vermont Department of Public Service (Vermont DPS) filed a request for rehearing of that order.

2. Pursuant to section 313(a) of the Federal Power Act, 16 U.S.C. 825l(a), a request for rehearing may be filed only by a party to the proceeding. In order for Vermont DPS to be a party to the proceeding, it must have filed a motion to intervene pursuant to Rule 214 of the Rules of Practice and Procedure, 18 CFR 385.214.[1] Vermont DPS has not filed a motion to intervene in this proceeding (the request for extension of time to file conveyance instruments). Since Vermont DPS is not a party to this proceeding, its request for rehearing is rejected.

3. Vermont DPS' rehearing request would have been rejected in any event. With regard to post-licensing proceedings, the Commission entertains motions to intervene only where the filing entails a material change in the plan of development or in the terms of the license; would adversely affect the rights of property holders in a manner not contemplated by the license; or involves an appeal by an agency or entity specifically given a consultation role.[2] The timing of a compliance filing is an administrative matter between the licensee and the Commission, and does not alter the substantive obligations of the licensee.[3] It therefore does not give rise to an opportunity for intervention and rehearing.

4. This notice constitutes final agency action. Request for rehearing by the Commission of this rejection notice must be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1878 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

[1] *See* Pacific Gas and Electric Company, 40 FERC ¶ 61,035 (1987).

[2] Kings River Conservation District, 36 FERC ¶ 61,365 (1986).

[3] City of Tacoma, Washington, 89 FERC ¶ 61,058 (1999). The only exception would be if the license articles specifically state that Vermont DPS must be consulted on extensions of deadlines set forth in the articles. Id. At 61,194 n. 9. Such is not the case here.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–43–002, et al.]

Tenaska Power Services, Co., et al.; Electric Rate and Corporate Filings

August 12, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Tenaska Power Services, Co. v. Midwest Independent Transmission System Operator, Inc.; Cargill Power Markets, LLC v. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. EL04–43–002, EL04–46–002 (Not Consolidated)]

Take notice that on August 9, 2004, Midwest Independent Transmission System Operator, Inc. submitted a compliance filing pursuant to the Commission's order issued June 23, 2004, in Docket Nos. EL04-43-001 and EL04-46-001, 107 FERC ¶ 61,308.

Comment Date: 5 p.m. eastern time on August 30, 2004.

2. Entergy Services, Inc.

[Docket No. ER91–569–023]

Take notice that, on August 9, 2004, Entergy Services, Inc. (ESI), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, Entergy), submitted a compliance filing under protest pursuant to the Commission's orders issued on April 14, 2004, in Docket No. ER96–2495–016, *et al.*, 107 FERC ¶ 61, 018 and July 8, 2004, in Docket No. ER96–2495–018, *et al.*, 1008 FERC ¶ 61,026.

Entergy states that copies of the filing were served on parties on the official service list in Docket No. ER91–569, as well as the Louisiana Public Service Commission, the Arkansas Public Service Commission, the Mississippi Public Service Commission, the New Orleans City Council, and the Public Utility Commission of Texas.

Comment Date: 5 p.m. eastern time on August 30, 2004.

3. AEP Power Marketing, Inc.; AEP Service Corporation, CSW Power Marketing, Inc.; CSW Energy Services, Inc.; and Central and South West Services, Inc.

[Docket Nos. ER96–2495–020, ER97–4143–008, ER97–1238–005, ER98–2075–014, ER9 8–542–010, (Not Consolidated)]

Take notice that, on August 9, 2004, as supplemented on August 10, 2004, American Electric Power Service Corporation (AEPSC), on behalf of the above-referenced AEP power marketers (collectively, AEP) submitted a market power analysis pursuant to the Commission's April 14, 2004, Order in Docket No. ER96–2495–016, *et al.*, 107 FERC ¶ 61,018 and its July 8, 2004, Order in Docket No. ER96–2495–018, *et al.*, 108 FERC ¶ 61,026.

AEP states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on August 30, 2004.

4. Southern Company Energy Marketing L.P.

[Docket Nos. ER97–4166–015]

Take notice that on August 9, 2004, Southern Company Services, Inc., (SCS) acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and Southern Power Company (collectively, Southern Companies), submitted generation market power screens and other analysis performed for Southern Companies in compliance with the Commission orders issued on April 14, 2004, and July 8, 2004, in Docket No. ER96–2495–016, *et al.*, 107 FERC ¶ 61,018 in Docket No. ER96–2495–018, *et al.*, 108- FERC ¶ 61, 026.

Comment Date: 5 p.m. eastern time on August 30, 2004.

5. Reliant Energy Aurora, LP, Liberty Electric Power, LLC; Reliant Energy Bighorn, LLC; Reliant Energy Choctaw County, LLC; Reliant Energy Electric Solutions, LLC; Reliant Energy Hunterstown, LLC; Reliant Energy Indian River, LLC; Reliant Energy Maryland Holdings, LLC; Reliant Energy Mid-Atlantic Power Holdings, LLC; Reliant Energy New Jersey Holdings, LLC; Reliant Energy Osceola, LLC; Reliant Energy Services, Inc.; Reliant Energy Seward, LLC; Reliant Energy Shelby County, LP; Reliant Energy Solutions East, LLC; Twelvepole Creek, LLC

[Docket No. ER01–687–003, ER01–2398–007, ER03–745–002, ER03–618–002, ER03–382–002, ER01–3036–004, ER99–3143–001, ER00–1749–001, ER00–22–001, ER99–1801–006, ER01–3035–004, ER00–1717–001, ER02–1762–002, ER01–852–003]

Take notice that on August 9, 2004, the above-captioned subsidiaries of Reliant Energy, Inc. filed an updated market study and tendered for filing amendments to certain of their market-based rate tariffs to include the Commission's Market Behavior Rules in compliance with the Commission's November 17, 2003, order in Docket No. EL01–118–000.

Comment Date: 5 p.m. eastern time on August 30, 2004.

6. Peoples Energy Services Corporation

[Docket No. ER01–2306–001]

Take notice that on August 9, 2004, Peoples Energy Services Corporation (PE Services) submitted for filing its triennial updated market analysis in compliance with the Commission's August 8, 2001, Letter Order in Docket No. ER01–2306–000. PE Services also submits certain revisions to its FERC Electric Tariff, Original Volume 1 to incorporate the Market Behavior Rules set forth in Investigation of Terms and Conditions of Public Utility Market-Based Authorizations, 105 FERC ¶ 61,218 (2003).

Comment Date: 5 p.m. eastern time on August 30, 2004.

7. PJM Interconnection, L.L.C.

[Docket Nos. ER03–1086–004 and ER04–361–001]

Take notice that on August 9, 2004, in compliance with the Commission's order issued July 9, 2004, order in Docket No. ER03–1086–001, 002 and 003, 108 FERC ¶ 61,030 (2004), PJM Interconnection, L.L.C. (PJM) filed revisions to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to change the rules on opportunity cost compensation to generators.

PJM states that copies of this filing have been served on all PJM members and utility regulatory commissions in the PJM region and on all persons listed on the official service list compiled by the Secretary in this proceeding.

Comment Date: 5 p.m. eastern time on August 30, 2004.

8. PJM Interconnection, L.L.C.

[Docket No. ER04–457–002]

Take notice that, on August 9, 2004, PJM Interconnection, L.L.C. (PJM) submitted a compliance filing pursuant to the Commission's order issued July 8, 2004, in Docket No. ER04–457–000, 108 FERC ¶ 61,025 (2004).

PJM states that copies of the filing were served on parties on the official service list in the above-captioned proceeding, all members of PJM, and each state electric utility regulatory commissions in the PJM region.

Comment Date: 5 p.m. eastern time on August 30, 2004.

9. Entergy Services, Inc.

[Docket No. ER04–763–002]

Take notice that on August 9, 2004, Entergy Services, Inc., (Entergy) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., submitted a compliance filing concerning Entergy's proposed regional reliability variations to Entergy's Large Generator Interconnection Procedures. This compliance filing was made pursuant to the Commission's order issued July 8, 2004, in Docket No. ER04–763–000, and 001, 108 FERC ¶ 61,020 (2004).

Comment Date: 5 p.m. eastern time on August 30, 2004.

10. South Carolina Electric & Gas Company

[Docket No. ER04–764–003]

Take notice that on August 9, 2004, South Carolina Electric & Gas Company filed revisions to its open access transmission-tariff (OATT) in order to incorporate certain revisions to the Large Generator Interconnection Procedures (LGIP) directed by the Commission an order issued July 18, 2004, in Docket No. ER04–764–000 and 001, 108 FERC ¶ 61,018 (2004).

Comment Date: 5 p.m. eastern time on August 30, 2004.

11. Entergy Services, Inc.

[Docket No. ER04–830–001]

Take notice that on August 9, 2004, Entergy Services, Inc., (Entergy) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy

New Orleans, Inc., submitted a compliance filing pursuant to the Commission's Order issued July 8, 2004, in Docket No. ER04–830–000, 108 FERC ¶ 61,029 (2004).

Comment Date: 5 p.m. eastern time on August 30, 2004.

12. NorthWestern Energy

[Docket No. ER04–1106–000]

Take notice that on August 9, 2004, NorthWestern Corporation, doing business as NorthWestern Energy, (NorthWestern Energy) tendered for filing Northwestern Energy's FERC Electric Tariff, Sixth Revised Volume No. 5, to include original and revised tariff sheets for which add (1) a new Schedule 9 containing the terms for the provision of a new service—Generation Imbalance Service and (2) a new Attachment J containing the *pro forma* Large Generator Interconnection Procedures and Large Generator Interconnection Agreement with minor modifications that have previously been accepted by the Commission. NorthWestern requests an effective date of October 1, 2004.

Comment Date: 5 p.m. eastern time on August 30, 2004.

13. Orlando Utilities Commission

[Docket No. NJ04–4–000]

Take notice that on July 28, 2004, Orlando Utilities Commission (OUC) submitted a supplement to its April 27, 2004, filing in Docket No. NJ04–4–000 to provide additional information regarding OUC's Guide for Interconnection, Control, and Protection of Producer-Owned Generation Interconnections.

Comment Date: 5 p.m. eastern time on August 20, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1857 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4512–003, et al.]

Consolidated Water Power Company, et al.; Electric Rate and Corporate Filings

August 11, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Consolidated Water Power Company

[Docket No. ER98–4512–003]

Take notice that on August 5, 2004, Consolidated Water Power Company (Consolidated) tendered for filing proposed changes to its FERC Electric Rate Schedule No. 1. Consolidated states that the proposed changes to its FERC Rate Schedule add the new behavior rules adopted by the Commission in Docket No. EL01–118–000. *See* Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003). Consolidated requests an effective date of October 4, 2004.

Consolidated states that copies of this filing were served upon all persons designated on the official service list compiled by the Secretary of the FERC in Docket No. ER98–4512.

Comment Date: 5 p.m. eastern time on August 26, 2004.

2. Tyr Energy, LLC

[Docket No. ER03–1182–001]

Take notice that on August 5, 2004, Tyr Energy, LLC (Tyr) tendered for filing an amendment to its FERC Electric Tariff, Original Volume No. 1 in compliance with the Commission's order issued November 17, 2003, Amending Market-Based Rate Tariffs and Authorizations, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003), the Commission's letter order accepting Tyr's market-based rate tariff for filing, issued on September 11, 2003, in Docket No. ER03–1182–000, and Order No. 614. Tyr's FERC Electric Tariff, Original Volume No. 1 incorporates the Market Behavior Rules set forth in the November 17 Order.

Comment Date: 5 p.m. eastern time on August 26, 2004.

3. PJM Interconnection, L.L.C.

[Docket No. ER04–653–002]

Take notice that on August 6, 2004, PJM Interconnection, L.L.C. submitted a response to the questions contained in the letter issued July 22, 2004, by the Commission's Office of Markets, Tariffs, and Rates in Docket No. ER04–653–002.

Comment Date: 5 p.m. eastern time on August 27, 2004.

4. Progress Energy, Inc., Florida Power Corporation, Carolina Power & Light Company

[Docket No. ER04–823–001]

Take notice that on August 6, 2004, Progress Energy, Inc. (Progress Energy), on behalf of Carolina Power & Light Company (CP&L) and Florida Power Corporation (FPC), tendered for filing in compliance with the Commission's letter order issued July 9, 2004, in Docket No. ER04–823–000 the *pro forma* LGIP and LGIA Table of Contents for CP&L's open-access transmission tariff, FERC Electric Tariff, Third Revised Volume No. 3 and FPC's open-access transmission tariff, FERC Electric Tariff, Second Revised Volume No. 6. Progress Energy requests an effective date of April 26, 2004.

Comment Date: 5 p.m. eastern time on August 27, 2004.

5. Southwest Power Pool, Inc.

[Docket No. ER04–833–001]

Take notice that on August 6, 2004, Southwest Power Pool, Inc. (SPP) submitted an amendment to its May 11, 2004, filing in Docket No. ER04–833–000. In response to the Commission's

July 7, 2004, deficiency letter, SPP provided additional information regarding a proposed experimental transmission service prepayment procedure.

Comment Date: 5 p.m. eastern time on August 27, 2004.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER04–934–001]

Take notice that, on August 6, 2004, Consolidated Edison Company of New York, Inc. (ConEdison) tendered for filing Service Agreement No. 331, Substitute Original Volume No. 1 under New York Independent System Operator Inc.'s FERC Open Access Transmission Tariff, Original Volume No. 1, an Interconnection Agreement between ConEdison and Power Authority of the State of New York (NYPA). ConEdison states that the agreement amends in limited respects and supersedes an Interconnection Agreement, dated June 2, 2004, that ConEdison filed on June 17, 2004, in Docket No. ER04–934–001.

ConEdison states that copies of this filing have been served on NYPA and the New York Independent System Operator, Inc.

Comment Date: 5 p.m. eastern time on August 27, 2004.

7. PJM Interconnection, L.L.C.

[Docket No. ER04–1068–001]

Take notice that on August 6, 2004, PJM Interconnection, L.L.C. (PJM) filed an amendment to its July 30, 2004, filing in Docket No. ER04–1068–000. PJM filed two corrected revised sheets to the PJM Open Access Transmission Tariff to replace sheets submitted with the July 30, 2004, filing in this proceeding that contained typing or administrative errors. PJM requests an effective date of October 1, 2004.

PJM states that copies of the filing were served on all PJM members, the utility regulatory commissions in the PJM region, and all persons on the service list for this proceeding.

Comment Date: 5 p.m. eastern time on August 27, 2004.

8. Tucson Electric Power Company

[Docket No. ER04–1090–001]

Take notice that on August 6, 2004, Tucson Electric Power Company (Tucson Electric) tendered for filing an amendment to its August 3, 2004 filing of Service Agreement No. 233 under Tucson Electric's FERC Electric Tariff, Third Revised Volume No. 2, an agreement between Tucson Electric Power Company and Navopache Electric Cooperative.

Comment Date: 5 p.m. eastern time on August 27, 2004.

9. Central Maine Power Company

[Docket No. ER04–1101–000]

Take notice that on August 5, 2004, Central Maine Power Company (CMP) tendered for filing First Revised Service Agreement No. 48 under CMP's FERC Electric Tariff, Fifth Revised Volume No. 3, an executed Local Network Transmission Service Agreement entered into with International Paper—Jay. CMP requests an effective date of October 1, 2003.

CMP states that copies of this filing have been served on International Paper and the Maine Public Utilities Commission.

Comment Date: 5 p.m. eastern time on August 26, 2004.

10. Wolf Hills Energy, LLC

[Docket No. ER04–1102–000]

Take notice that on August 5, 2004, Wolf Hills Energy, LLC (Wolf Hills) submitted its proposed FERC Electric Tariff, Original Volume No. 2, for reactive supply and voltage control from generation sources service provided to the transmission facilities that will be controlled by the PJM Interconnection, L.L.C. (PJM) upon the transfer of operational control of American Electric Power Company's (AEP) transmission system to PJM.

Wolf Hills states that copies of the filing were served upon Wolf Hills' jurisdictional customers, PJM, AEP and the Virginia State Corporation Commission.

Comment Date: 5 p.m. eastern time on August 26, 2004.

11. Big Sandy Peaker Plant, LLC

[Docket No. ER04–1103–000]

Take notice that on August 5, 2004, Big Sandy Peaker Plant, LLC (Big Sandy) submitted, its proposed FERC Electric Tariff, Original Volume No. 2, for reactive supply and voltage control from generation sources service provided to the transmission facilities that will be controlled by the PJM Interconnection, L.L.C. (PJM) upon the transfer of operational control of American Electric Power Company's (AEP) transmission system to PJM.

Big Sandy states that copies of the filing were served upon Big Sandy's jurisdictional customers, PJM, AEP and the Public Service Commission of West Virginia.

Comment Date: 5 p.m. eastern time on August 26, 2004.

12. Oklahoma Gas and Electric Company

[Docket No. ER04–1104–000]

Take notice that on August 6, 2004, Oklahoma Gas and Electric Company (OG&E) submitted for filing OGC & E's FERC Rate Schedule Original No. 141 the Operating and Maintenance Agreement for the Transmission Assets of the McClain Generating Facility between Oklahoma Municipal Power Authority, Arkansas Public Service Commission and Oklahoma Gas and Electric Company.

OG&E states that copies of the filing were served upon Oklahoma Municipal Power Authority and the Oklahoma Corporation Commission.

Comment Date: 5 p.m. eastern time on August 27, 2004.

13. PJM Interconnection, L.L.C.

[Docket No. ER04–1105–000]

Take notice that on August 6, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing First Revised Service Agreement No. 937 under PJM's FERC Electric Tariff Sixth Revised Volume No. 1, an executed interconnection service agreement among PJM, Meyersdale Windpower, L.L.C., and Pennsylvania Electric Company, a FirstEnergy Company. PJM requests an effective date of July 7, 2004.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: 5 p.m. eastern time on August 27, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1858 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–146–000, et al.]

FortisUS Energy Corporation, et al.; Electric Rate and Corporate Filings

August 13, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. FortisUS Energy Corporation, Maritime Electric Company, Limited, Fortis Properties Corporation

[Docket No. EC04–146–000]

Take notice that on August 12, 2004, FortisUS Energy Corporation, (FortisUS) Maritime Electric Company, Limited, and Fortis Properties Corporation (collectively, Applicants) submitted an application pursuant to section 203 of the Federal Power Act and part 33 of the Commission's regulations for authorization of a disposition of jurisdictional facilities. Applicant states that in the intra-corporate transaction described in the application, the ownership of FortisUS Energy Corporation, a public utility, will be transferred from Maritime Electric Company, Limited to Fortis Properties Corporation. Applicants further state that each of FortisUS Energy Corporation, Maritime Electric Company, Limited, and Fortis Properties Corporation are, and will continue to be, wholly-owned subsidiaries of Fortis Inc., a Canadian corporation.

Comment Date: 5 p.m. Eastern Time on September 2, 2004.

2. S&P Windfarm, LLC

[Docket No. EG04–92–000]

Take notice that on August 11, 2004, S&P Windfarm, LLC (S&P) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

S&P states that it owns and operates a 1.9 MW wind energy conversion facility near Brewster, Minnesota.

S&P states that a copy of this Application has been served on the Secretary of the Securities and Exchange Commission and on the Minnesota Public Utilities Commission.

Comment Date: 5 p.m. Eastern Time on September 1, 2004.

3. DL Windy Acres, LLC

[Docket No. EG04–93–000]

Take notice that on August 11, 2004, DL Windy Acres, LLC (DL Windy) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

DL Windy states that it owns and operates a 1.9 MW wind energy conversion facility near Brewster, Minnesota.

DL Windy states that a copy of this Application has been served on the Secretary of the Securities and Exchange Commission and on the Minnesota Public Utilities Commission.

Comment Date: 5 p.m. Eastern Time on September 1, 2004.

4. IDT Energy, Inc.

[Docket No. ER04–1035–001]

Take notice that on August 10, 2004, IDT Energy, Inc. (IDT Energy) submitted modifications to IDT Energy's FERC Rate Schedule No. 1, which originally had been filed in this proceeding on July 21, 2004. IDT Energy requests an effective date of September 20, 2004.

Comment Date: 5 p.m. Eastern Time on August 31, 2004.

5. Xcel Energy Operating Companies, Northern States Power Company d/b/a Xcel Energy

[Docket No. ER04–1107–000]

Take notice that on August 10, 2004, Xcel Energy Services Inc. (XES) on behalf of Northern States Power Company d/b/a Xcel Energy (NSP) filed a signed Contract for Interconnection, Load Control Boundary and Maintenance between NSP and the United States Department of Energy Western Area Power Administration (Pick-Sloan Missouri Basin Program, Eastern Division) dated July 12, 2004. XES states that it proposes that the Interconnection Agreement be designated as Rate Schedule 446–NSP to the Xcel Energy Operating Companies FERC Electric Tariff, Original Volume No. 3. XES requests an effective date of January 31, 2001.

Comment Date: 5 p.m. Eastern Time on August 31, 2004.

6. Holland Energy, LLC

[Docket No. ER04–1075–000]

Take notice that on August 2, 2004, Holland Energy, Inc. (Holland) submitted, under section 205 of the Federal Power Act, its proposed FERC Electric Tariff, Original Volume No. 2, for reactive supply and voltage control from independent generation resources service provided to the transmission system under the operational control of the Midwest Independent Transmission System Operator, Inc.

Comment Date: 5 p.m. Eastern Time on August 23, 2004.

7. Mid-American Energy Commission

[Docket No. ER04–1108–000]

Take notice that on August 10, 2004, MidAmerican Energy Company (MidAmerican) filed with the Commission an amended Interconnection Agreement with the City of Carlisle, Iowa. MidAmerican requests an effective date of June 28, 2004.

Comment Date: 5 p.m. Eastern Time on August 31, 2004.

8. Central Vermont Public Service Corporation

[Docket No. ER04–1109–000]

Take notice that on August 10, 2004, Central Vermont Public Service Corporation (Central Vermont) tendered for filing a revised Network Integration Transmission Service Agreement and Network Operating Agreement with Vermont Electric Cooperative, Inc. (VEC) under Central Vermont's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 7. Central Vermont states that the revised Service Agreement deletes references to metering facilities that have been removed and adds a delivery point. Central Vermont requests an effective date of July 15, 2004.

Central Vermont states that copies of the filing were served upon VEC, the Vermont Public Service Board and the Vermont Department of Public Service.

Comment Date: 5 p.m. Eastern Time on August 31, 2004.

9. Mirant Zeeland, LLC

[Docket No. ER04–1110–000]

Take notice that on August 10, 2004, Mirant Zeeland, LLC (Zeeland) filed its

proposed tariff (FERC Electric Tariff, Original Volume No. 2) and supporting cost data for its annual revenue requirement under Midwest Independent System Operator, Inc.'s (Midwest ISO) proposed Schedule 21—Reactive Supply and Voltage Control from Independent Generation Sources Service. Zeeland requests an effective date of October 1, 2004.

Zeeland states that it has served copies of this filing on the Michigan Public Service Commission, the Midwest ISO, and Michigan Electric Transmission Company.

Comment Date: 5 p.m. Eastern Time on August 31, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1868 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD04–9–001]

Billing Procedures for Annual Charges for the Costs of Other Federal Agencies for Administering Part I of the Federal Power Act; Notice Issuing ''Other Federal Agency Cost'' Submission Form and Extending Related Submission Deadlines

August 13, 2004.

1. By order issued June 18, 2004, the Commission acted on matters remanded to it by the court in *City of Tacoma, WA, et al.* v. *FERC*, 331 F.3d 106 (D.C. Cir. 2003). The court concluded that the Commission is required to determine the reasonableness of costs incurred by other Federal agencies (OFAs) in connection with their participation in Commission proceedings under Part I of the Federal Power Act (FPA) [1] when those agencies seek to include such costs in the administrative annual charges licensees must pay to reimburse the United States for the cost of administering Part I.[2] The court also remanded issues regarding the eligibility of specific types of OFA costs for reimbursement, and the availability of refunds for certain charges.

2. The June 18 Order (1) determined which OFA costs are eligible to be included in administrative annual charges; (2) established procedures for Commission review of future OFA cost submittals, as well as those currently on appeal and (3) introduced a proposed new form to be used in submitting OFA costs, the form to be finalized in a technical conference.[3]

3. The technical conference, held on July 1, 2004, was attended by Commission staff and counsel representing affected licensees. The licensees made recommendations with respect to the guidance the Commission should give the OFAs in filling out the form, but did not propose any alterations to the form itself. The licensees did not make any specific recommendations regarding the form's content or design. Attached to this notice is the final form, which is the same as that proposed in the June 18 Order.

4. Numerous licensees have requested rehearing of the June 18 order. To provide more certainty to the annual charges billing process, the Commission has decided to delay the billing of the OFA costs that would have been included in the 2004 annual charges statement until after the rehearing requests are addressed. The Commission informed licensees of this decision in an August 4, 2004 letter included with the Statement of Annual Charges for Administration, Government Dams and Indian Lands for Bill Year 2004. Similarly, the Commission is extending the deadlines stated in the June 18 Order for OFAs to submit their cost data for Fiscal Years 1998–2003. The Commission will establish a new deadline for these submittals after the rehearing requests have been addressed. Anyone having questions regarding this notice should contact Anton Porter at (202) 502–8728, e-mail at *anton.porter@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1879 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 794–823b.

[2] The OFAs are the Bureau of Indian Affairs, the Bureau of Land Management, Bureau of Reclamation, National Park Service, and U.S. Fish and Wildlife Service (all in the Department of the Interior); Corps of Engineers (in the Department of the Army); U.S. Forest Service (in the Department of Agriculture); and National Oceanic and Atmospheric Administration (in the Department of Commerce).

[3] The form was attached to the order and is posted on the Commission's Web site, *http://www.ferc.gov/*.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2210–095–VA]

Appalachian Power Company; Notice of Availability of Environmental Assessment

August 16, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application for non-project use of project lands and waters at the Smith Mountain Pumped Storage Project (FERC No. 2210) and has prepared an Environmental Assessment (EA) for the proposed non-project use. The project is located on the Roanoke and Blackwater Rivers in Bedford, Campbell, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

In the application, Appalachian Power Company (licensee) requests Commission authorization to permit Resource Partners, L.L.C. to install and operate boat dock facilities at a residential development known as The Cottages at Contentment Island located

along the Blackwater River portion of Smith Mountain Lake. No dredging is planned as part of this proposal. The EA contains the Commission staff's analysis of the probable environmental impacts of the proposal and concludes that approving the licensee's application, with staff's recommended environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA is attached to a Commission order titled ''Order Modifying and Approving Non-Project Use of Project Lands and Waters,'' which was issued August 13, 2004, and is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (prefaced by P–) and excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1865 Filed 8–19–04; 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 Intent To Prepare an Environmental Assessment for the Proposed AmerenUE Pipeline Project and Request for Comments on Environmental Issues

August 13, 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 AmerenUE Pipeline Project involving construction and operation of facilities by CenterPoint—Mississippi River Transmission Corporation (MRT) in Madison and St. Clair Counties, Illinois. These facilities consist of about 3.6 miles of 20-inch-diameter pipeline lateral, a new meter station, and a 6,232-horsepower (hp) compressor station. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including how to participate in the Commission's proceedings.

Summary of the Proposed Project

The proposed pipeline lateral (Line A–334) would extend from an interconnection with MRT's existing Alton Loop East Lateral Line at its Horseshoe Lake Terminal to the new meter station at Union's Venice Power Plant. The new meter station would be installed at the Venice Power Plant and would consist of a 2-inch mini-turbine and 10-inch ultrasonic meter installed on a prefabricated skid assembly complete with upstream and downstream block valves on each meter. The Horseshoe Lake Compressor Station would consist of four units with appurtenant facilities, to be installed within MRT's 5.7 acre Horseshoe Lake facility lot, where MRT's Alton Loop East Line and the new Line A–334 would interconnect, and where a meter/regulator station currently exists.

The general location of MRT's proposed facilities is shown on the map attached as appendix 1.[1]

Land Requirements for Construction

About 51.1 acres of land would be affected during construction of this project. Upon completion of construction, about 25.4 acres would be maintained as permanent operational right-of-way.

Construction of Line A–334 would parallel an abandoned railroad track to the greatest extent possible (2.2 miles) and would use a nominal 50-foot-wide right-of-way for both construction and permanent operation in this area. Typically, for construction of Line A–334, MRT proposes to use a 75-foot-wide construction right-of-way, consisting of 50 feet of permanent right-of-way and 25 feet of temporary workspace. Several agricultural fields and cultivated areas exist along the pipeline route. In these locations, MRT would perform topsoil segregation, and proposes to use a 100-foot-wide construction right-of-way, consisting of 50 feet of permanent right-of-way, 25 feet of temporary workspace, and 25 feet of additional temporary workspace. Construction of Line A–334 would require about 13.6 acres of additional temporary workspaces where it crosses roads, railroads, wetlands, and utilities. About 33.9 acres of land would be affected during construction of the lateral and about 21.8 acres would be maintained as permanent right-of-way. Land used as temporary workspaces and additional temporary workspaces would revert to the existing land use.

The proposed meter station would use about 0.2 acre (75 feet by 100 feet) of land at Union's Venice Power Plant for both construction and operation.

The proposed Horseshoe Lake Compressor Station would use about 3.4 acres of land for both construction and operation within MRT's 5.7 acre Horseshoe Lake facility lot. MRT would fence area of about 2.9 acres around the proposed compressor station.

All access roads designated for use during construction are existing dirt, gravel, or paved roads.

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[2] 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.

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

[1] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies of all appendices, other than appendix 1 (map), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] ''We'', ''us'', and ''our'', refer to the environmental staff of the Office of Energy Projects (OEP).

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.

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 (including alternative locations/routes), 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., N.E., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1.
- Reference Docket No. CP04–346–000.

Mail your comments so that they will be received in Washington, DC on or before September 10, 2004.

The Commission strongly encourages electronic filing of comments. *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.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's e-Filing system) or 14 paper 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).[3] 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* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659.

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, site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx*along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1870 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

[3] 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

[Project No. 2720–036—MI/WI]

City of Norway, MI; Notice of Availability of Environmental Assessment

August 13, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a new license for the Sturgeon Falls Hydroelectric Project, located on the Menominee River, in Dickson County, Michigan and Marinette County, Wisconsin, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyzed the potential environmental effects of relicensing the project and conclude that issuing a new license for the project, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Sturgeon Falls Project No. 2720'' to all comments. Comments may be filed electronically via Internet in lieu of paper. 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. For further information, contact Brian

Romanek at (202) 502–6175 or by e-mail at *brian.romanek@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1877 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2067–021 California]

Oakdale and South San Joaquin Irrigation Districts; Notice of Availability of Environmental Assessment

August 13, 2004.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR part 380), Commission staff have reviewed an application for non-project use of project lands and waters at the Tulloch Project (FERC No. 2067), and have prepared an Environmental Assessment (EA) on the application. The project is located on the Stanislaus River in Calaveras and Tuolumne Counties, California.

Specifically, the project licensees (Oakdale and South San Joaquin Irrigation Districts) have requested Commission approval to permit the County of Tuolumne and Joe McGrath to add and improve certain facilities at the Lake Tulloch Campground and Marina, located on Tulloch Lake, the project reservoir. In the EA, Commission staff have analyzed the probable environmental effects of the proposed marina improvements and have concluded that approval of the proposal, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission order titled ''Order Approving Non-project Use of Project Lands and Waters'', which was issued August 12, 2004 and is available for review in Public Reference Room 2–A of the Commission's offices at 888 First Street, NE., Washington, DC. The EA also may be viewed on the Commission's Web site *http://www.ferc.gov* using the ''e-library'' link. Enter the docket number (prefaced byP–) and excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659, TTY (202) 208–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1876 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2174–012]

Southern California Edison Company; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 12, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 2174–012.

c. *Date filed:* March 27, 2003.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Portal Hydroelectric Project

f. *Location:* On Camp 61 Creek and Rancheria Creek, tributaries to the San Joaquin River in Fresno County, California. The project occupies 77.7 acres of public land administered by the Forest Supervisor of the Sierra National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* R. W. Krieger, Vice President, Power Production, Southern California Edison Company, 300 N. Lone Hill Avenue, San Dimas, California 91773.

i. *FERC Contact:* Timothy Looney at (202) 502–6096 or *timothy.looney@ferc.gov*.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice; reply comments due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. *Status of environmental analysis:* This application is ready for environmental analysis at this time.

l. *Description of Project:* The Portal Project consists of the following existing facilities: (1) A 795-foot-long compacted earth and rock-fill dam; (2) Portal forebay, with a 325 acre-foot useable storage capacity at elevation 7,185 feet; (3) an open channel spillway at the left abutment of the dam, discharging into Camp 61 Creek; (4) an outlet channel consisting of (a) the Adit 2 tunnel and shaft between Portal forebay and Ward Tunnel, (b) Ward Tunnel for a distance of about 32,000 feet from Adit 2 to the base of the surge chamber on the tunnel (Ward Tunnel is licensed as part of FERC Project No. 67), (c) a rock trap immediately downstream of the surge chamber, and (d) a 1,180-foot-long penstock from the rock trap to where it bifurcates just upstream of the Portal powerhouse; (5) a 10.8-MW turbine located in the concrete powerhouse; and (6) a 2.5-mile-long 480 kV transmission line. The Portal Project is one of six projects that are part of a hydroelectric system owned and operated by Southern California Edison Company and known collectively as the Big Creek Hydroelectric System.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1 (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support. To view upcoming FERC events, go to *http://*

www.ferc.gov and click on ''View Entire Calendar.''

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

n. *All filings must:* (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. *Procedures schedule:* The Commission staff proposes to issue a Draft Environmental Assessment (DEA). Staff intends to allow at least 30 days for entities to comment on the DEA before preparing the Final Environmental Assessment (FEA). Commission staff will take into consideration all comments received on the DEA before final action is taken on the license application. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Issue REA notice: August 2004.

Issue notice of availability of DEA: January 2005.

Issue notice of availability of FEA: April 2005.

Ready for Commission decision on application: June 2005.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1847 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7387–019]

Erie Boulevard Hydropower, L.P.; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 12, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 7387–019.

c. *Date Filed:* October 20, 2003.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Piercefield Hydroelectric Project.

f. *Location:* On the Raquette River, in the St. Lawrence and Franklin Counties, New York. The project does not occupy Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jerry L. Sabattis, P.E., Licensing Coordinator, Erie Boulevard Hydropower, L.P., 225 Greenfield Parkway, Liverpool, New York, 13088, telephone (315) 413–2787 and Mr. Samuel S. Hirschey, P.E., Manager, Licensing, Compliance, and Project Properties, 225 Greenfield Parkway, Liverpool, New York, 13088, telephone (315) 413–2790.

i. *FERC Contact:* Janet Hutzel, *janet.hutzel@ferc.gov*, telephone (202) 502–8675 or Kim Carter, *kim.carter@ferc.gov*, telephone (202) 502–6486.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an interveners files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process.

k. *Status of Environmental Analysis:* This application has been accepted, and is ready for environmental analysis at this time.

l. *Description of Project:* The Piercefield Hydroelectric Project consists of the following existing facilities: (a) A dam comprised of a 495-foot-long concrete retaining wall/dike on the right shoreline, a 620-foot-long concrete and masonry stone retaining wall located along the left shoreline, a 118-foot-long stop log spillway, and a 294-foot-long, 22-foot-high ogee spillway section; (b) a 110-foot-long concrete masonry forebay, having a varying width of 40 feet to 55 feet and average depth of 17 feet; (c) a 370-acre reservoir at normal pool elevation of 1542.0 feet m.s.1.; (d) a powerhouse containing 3 generating units having a total rated capacity of 2,700 kW; (e) 600–V and 2.4–kV generator leads; (f) 600–V/46–kV, 2.5–MVA and the 2.4/46–kV, 2.5–MVA three-phase transformer banks; (g) 3.84-mile, 46–kV transmission line; and (h) appurtenant facilities.

m. A copy of the application 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 (P–7387), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments,

recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Notice of the availability of the EA: February 2005.

Ready for Commission's decision on the application: June 2005.

Unless substantial comments are received in response to the EA, staff intends to prepare a single EA in this case. If substantial comments are received in response to the EA, a final EA will be prepared with the following modifications to the schedule.

Notice of the availability of the final EA: June 2005.

*Ready for Commission's decision on the application:*August 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1848 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

August 16, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 2082–027.

c. *Date filed:* February 25, 2004.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Klamath Hydroelectric Project.

f. *Location:* On the Klamath River in Klamath County, Oregon and on the Klamath River and Fall Creek in Siskiyou County, California. The project currently includes 219 acres of federal lands administered by the Bureau of Reclamation and the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Todd Olson, Project Manager, PacifiCorp, 825 NE Multnomah, Suite 1500, Portland, Oregon 97232, (503) 813–6657.

i. *FERC Contact:* John Mudre, (202) 502–8902 or *john.mudre@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The proposed Project consists of four existing generating developments (J.C. Boyle, Copco No. 1, Copco No. 2. and Iron Gate) along the mainstem of the Upper Klamath River, between RM 228 and RM 254, and one generating development (Fall Creek) on Fall Creek, a tributary to the Klamath River at about RM 196. The existing Spring Creek diversion is proposed for inclusion with the Fall Creek Development. The currently licensed East Side, West Side, and Keno Developments are not included in the proposed project.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1864 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

August 13, 2004.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection.

a. *Type of Application:* Original major license.

b. *Project No.:* 11925–002.

c. *Date Filed:* July 30, 2004.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Arthur R. Bowman Hydroelectric Project.

f. *Location:* On the Crooked River, in the town of Prineville, Crook County, Oregon. The project occupies approximately one acre of land owned by the United States Bureau of Reclamation (BOR).

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Brent L. Smith, President; Northwest Power Services, Inc.; P.O. Box 535; Rigby, ID 83442; (208) 745–0834; or Vincent A. Lamarra; Ecosystems Research Institute; 975 South State Highway; Logan, UT 84321; (435) 752–2580.

i. *FERC Contact:* Emily Carter at (202) 502–6512, or *emily.carter@ferc.gov.*

j. *Cooperating Agencies:* We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item (l) below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for Filing Additional Study Requests and Requests for Cooperating Agency Status:* September 28, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the ''filing process.''

m. *Status:* This application is not ready for environmental analysis at this time.

n. *Description of Project:* The proposed Arthur R. Bowman Hydroelectric Project would utilize the existing BOR Arthur R. Bowman dam and be operated in a run-of-river mode with fully automated control of the turbine generators and associated systems. The proposed project would consist of the following features: (1) A 800-foot-long, 245-foot-high earthfill embankment dam; (2) a 3,030-acre reservoir, with a storage capacity of 154,700 acre-feet; (3) a 30-foot-long, 45-foot-wide powerhouse, containing two turbine and generating units (Horizontal Francis), having a total installed capacity of 6800 kilowatts; (4) a 25,000-volt transmission line; and (5) appurtenant facilities.

The applicant estimates that the average annual generation would be about 18,500,000 kilowatt-hours.

o. A copy of the application 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 (P–11925), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Oregon State Historic Preservation Officer (SHPO), as required by 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Action	Tentative date
Issue Deficiency Letter/Additional Information Requests.	October 2004.
Issue Acceptance letter	December 2004.
Issue Scoping Document 1 for comments.	January 2005.
Request Additional Information (if necessary).	April 2005.
Issue Scoping Document 2 ...	April 2005.
Notice of application is ready for Environmental Analysis.	April 2005.
Notice of the availability of the Draft EA.	October 2005.
Initiate 10(j) process	December 2005.
Notice of the availability of the Final EA.	May 2006.
Ready for Commission's decision on the application.	July 2006.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1875 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at Meeting of California Independent System Operator Corporation

August 13, 2004.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the August 17, 2004 MRTU Stakeholder Summit meeting of the California Independent System Operator Corporation (CAISO). The discussion will include the development and implementation of the CAISO's Market Redesign and Technology Upgrade project, which incorporates the conceptual market design changes of MD02.

The discussion may address matters at issue in the following proceedings:

Docket Nos. ER02–1656–000 and ER02–1656–019, *California Independent System Operator Corporation*

Docket Nos. ER04–928–000 and ER04–928–001, *California Independent System Operator Corporation*

Docket Nos. EL04–108–000 and EL04–108–001, *Public Utilities*

Providing Service in California under Sellers' Choice Contracts

The meeting will take place on August 17, 2004 and is expected to begin at approximately 9:30 a.m., PDT. The meeting will take place at the Hyatt Regency Sacramento, 1209 L St., Sacramento, CA. The meeting is open to the public.

For more information, contact Matthew Deal, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (202) 502–6363 or *matthew.deal@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1873 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at Meeting of California Independent System Operator Corporation

August 13, 2004.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the August 18, 2004 stakeholder meeting of the California Independent System Operator Corporation (CAISO) to discuss the development of trading hubs under the CAISO's proposed LMP market design. The CAISO will seek input on its proposed trading hub definitions.

The discussion may address matters at issue in the following proceedings:

Docket Nos. ER02–1656–000 and ER02–1656–019, *California Independent System Operator Corporation*.

Docket Nos. ER04–928–000 and ER04–928–001, *California Independent System Operator Corporation*.

Docket Nos. EL04–108–000 and EL04–108–001, *Public Utilities Providing Service in California under Sellers' Choice Contracts.*

The meeting will take place on August 18, 2004 and is expected to begin at approximately 10 a.m., PDT. The meeting will take place at the CAISO's facilities in Folsom, CA. The meeting is open to the public.

For more information, contact Matthew Deal, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (202) 502–6363 or *matthew.deal@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E4–1874 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–699–000]

Entergy Services, Inc.; Notice of Meeting

August 13, 2004.

Notice is hereby given that Entergy Services, Inc. (Entergy) will hold a meeting to discuss the types of products that Entergy is currently interested in procuring in the weekly market and under the revised Weekly Procurement Process (WPP) proposed in the above captioned docket. The meeting will be held on August 26, 2004, at 10 a.m. (EDT) in a room to be designated in the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Staff of the Federal Energy Regulatory Commission is expected to participate. The meeting is open to the public.

For further information, please contact Anna Cochrane at (202) 502–6357; *anna.cochrane@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1871 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2237–013 Georgia]

Georgia Power Company; Notice of Georgia Power's Morgan Falls Operations Technical Workshop

August 16, 2004.

In response to stakeholder feedback received at the July 2004 Morgan Falls Study Plan Meetings, Georgia Power is convening a Morgan Falls Operations Technical Workshop. The Workshop will be held September 1, 2004 from 8:30 a.m. until 12 noon (e.s.t.) at the Georgia Power corporate office address provided below. The purpose of the Workshop is to provide stakeholders with a better basic understanding of project operations. A description of project operation was previously provided in the Pre-Application Document, Scoping Document I, the Proposed Study Plan, and at Scoping Meetings, but because of its complexity, several stakeholder groups had requested at the Study Plan Meetings additional discussions of the operations of the Morgan Falls Project. A Morgan Falls Operations primer, based on stakeholder feedback received at the Study Plan Meetings, will be distributed for review prior to the Technical Workshop.

Workshop Meeting Location: Georgia Power Company, J. K. Davis Conference Center, First Floor, Room 7, 241 Ralph McGill Boulevard, NE., Atlanta, Georgia 30308.

For building security clearance, please RSVP to George Martin at (404) 506–1357 or *gamartin@southernco.com.* If you have any questions, please contact Mr. Martin or Janet Hutzel at (202) 502–8675 or *janet.hutzel@ferc.gov.*

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1866 Filed 8–19–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0012; FRL–7803–4]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for the Graphic Arts Industry (Renewal), ICR Number 0657.08, OMB Number 2060–0105

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces, that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 20, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0012, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, EPA West, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information

and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division (Mail Code 2223A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 25, 2004 (69 FR 29718), EPA sought comments on this ICR pursuant to CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2004–0012, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NSPS for the Graphic Arts Industry (40 CFR Part 60, Subpart QQ) (Renewal).

Abstract: The New Source Performance Standards (NSPS) for subpart QQ were proposed on October 28, 1980, and promulgated on November 8, 1982. These standards apply to each publication rotogravure printing press (not including proof presses) commencing construction, modification or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 60, subpart QQ.

Owners or operators subject to this subpart are required to establish and maintain records, make reports, install, use and maintain monitoring equipment or methods as required, and provide other information as EPA may deem necessary. Owners or operators of the affected facilities described have certain notification, reporting, and recordkeeping requirements that are mandatory for compliance under this rule. These are a one-time-only notification of the actual dates of startup, keeping records of monthly emissions calculations, and reporting of the initial performance test. Any owner or operator subject to the provisions of this part will maintain a file of these measurements, and retain the file for at least two years following the date of such reports and records.

Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. Performance test reports are needed as these are the Agency's records of a source's initial capability to comply with the emission standard.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 37 (rounded) hours per response. 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.

Respondents/Affected Entities: Owners/operators of Graphic Arts Industry.

Estimated Number of Respondents: 19.

Frequency of Response: Semiannually, initially.

Estimated Total Annual Hour Burden: 1,718.

Estimated Total Annual Costs: $108,663, which includes $0 annualized capital/startup costs, $0 O & M costs, and $108,663 annual labor costs.

Changes in the Estimates: There is a decrease of 2,153 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease in the burden from the most recently approved ICR is due to a more accurate estimate of existing and anticipated new sources.

Dated: August 2, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–19150 Filed 8–19–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6654–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental

Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D–CGD–G39040–LA Rating EC2, Gulf Landing Deepwater Port License Application for Construction of a Deepwater Port and Associated Anchorages in the Gulf of Mexico, South of Cameron, LA.

Summary: EPA expressed environmental concerns with the proposed action and asked for additional information regarding air quality, cumulative impacts and mitigation be included in the Final EIS.

ERP No. D–DOE–K08029–00 Rating EC2, Imperial-Mexicali 230-kV Transmission Lines, Construct a Double-Circuit 230–kV Transmission Line, Presidential Permit and Right-of-Way Grants, Imperial Valley Substation to Calexico at the U.S.-Mexico Border, Imperial County, CA and U.S.-Mexico Border.

Summary: EPA expressed concerns regarding air quality impacts, particularly ozone formation, in Imperial County from the related Mexicali power plants; and cumulative impacts to water quality.

ERP No. D–IBR–K39085–CA Rating EC2, San Joaquin River Exchange Contractors Water Authority—2005 to 2014, Water Transfer Program, Stanislaus, San Joaquin, Merced, Madera, Fresno, San Benito, Santa Clara, Kern, and Kings Counties, CA.

Summary: EPA expressed environmental concerns related to impacts to water quality and agricultural drainage, irrigated lands conditional waivers and restoration issues.

ERP No. D–NPS–D65030–VA Rating LO, Petersburg National Battlefield General Management Plan, Implementation, Petersburg, VA.

Summary: EPA expressed lack of objections with the proposed action.

ERP No. DS–BLM–K67050–NV Rating EC2, Pipeline/South Pipeline Pit Expansion Project, Updated Information on Modifying the Extending Plan of Operations (Plan), Gold Acres Mining District, Launder County, NV.

Summary: EPA expressed environmental concerns regarding potential impacts to pit lake water quality, wildlife, heap leach pad stability in the earth fissure-prone area, and air quality; and uncertainties regarding feasible mitigation measures, reclamation bonding, and the long-term contingency fund. EPA requested additional information regarding pit lake water quality, ecological risk assessment, air quality modeling, hazardous air pollutants, mitigation measures and the long-term contingency fund.

Final EISs

ERP No. F–AFS–D65029–PA, Spring Creek Project Area (SCPA), To Achieve and Maintain Desired Conditions, Allegheny National Forest, Marienville Ranger District, Elk and Forest Counties, PA.

Summary: The FEIS has adequately addressed EPA's concerns.

ERP No. F–AFS–L65444–OR, Eyerly Fire Salvage Project, Burned and Damaged Trees Salvage, Reforestation and Fuels Treatment, Implementation, Deschutes National Forest, Sisters Ranger District, Jefferson County, OR.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–J02041–WY, Desolation Flats Natural Gas Field Development Project, Drilling Additional Development Wells, Carbon and Sweetwater Counties, WY.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FAA–F51046–MN, Flying Cloud Airport Expansion, Extensions of the Runway 10R/28L and 10L/28R, Long-Term Comprehensive Development, In the City of Eden Prairie, MN.

Summary: EPA has no objection to the proposed action provided mitigation measures are included in the Record of Decision.

ERP No. F–FRC–L05231–AK, Glacier Bay National Park and Preserve, Falls Creek Hydroelectric Project (FERC. NO. 11659) and Land Exchange Project, Issuance of License and Land Exchange, Kahtaheena River (Falls Creek) near Gustavus in Southeastern, AK.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–AFS–L39057–OR, Rimrock Ecosystem Restoration Projects, New Information on the Commercial and Non-commercial Thinning Treatments in the C3 Management Area, Umatilla National Forest, Heppner Ranger District, Grant, Morrow and Wheeler Counties, OR.

Summary: No formal comment letter was sent to the preparing agency.

Dated: August 17, 2004.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 04–19147 Filed 8–19–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6654–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa.*

Weekly receipt of Environmental Impact Statements filed August 9, 2004 through August 13, 2004 pursuant to 40 CFR 1506.9.

EIS No. 040380, FINAL EIS, COE, CA, Napa River Salt Marsh Restoration Project, Salinity Reduction and Habitat Restoration in the Napa River Unit, San Pablo Bay, Napa and Solano Counties, CA. *Wait Period Ends:* September 20, 2004. *Contact:* Shirlin Tolle (415) 977–8467.

EIS No. 040381, FINAL EIS, COE, AL, Choctaw Point Terminal Project, Construction and Operation of a Container Handling Facility, Department of the Army (DA) Permit Issuance, Mobile County, AL. *Wait Period Ends:* September 20, 2004. *Contact:* Dr. Susan Ivester Rees (251) 694–4141.

EIS No. 040382, DRAFT EIS, FHW, CA, Bautista Canyon Road Project, California Forest Highway 224, Improvements between Florida Avenue (CA–74) and CA–371, Special-Use-Permit, NPDES Permit, U.S. Army COE Section 10 and 404 Permit, Riverside County, CA. *Due:* October 4, 2004. *Contact:* Stephen Hallisy (720) 963–3685.

EIS No. 040383, DRAFT EIS, FTA, WA, Adoption—WA–104 Edmonds Crossing, Connecting Ferries, Buses and Rails, Funding, NPDES Permit and U.S. Army COE Section 10 and 404 Permits Issuance, City of Edmonds, Snohomish County, WA. *Contact:* Jennifer Bowman (206) 220–7933.

The U.S. Department of Transportation's (DOT's) Federal Transit Administration (FTA) has adopted DOT's Federal Highway Administration DEIS #980063, filed on 03/02/1998. FTA was a Cooperating Agency on the DEIS, Recirculation of the DEIS is Not Necessary under Section 1506.3(c) of the CEQ Regulations. FTA will be a

Joint Lead Agency on the FEIS, will accept comments on the FEIS.

EIS No. 040384, FINAL EIS, FHW, CA, CA–905 Freeway or Tollway Construction Project, Route Location, Adoption and Construction, Otay Mesa Port of Entry to I–805, Funding and U.S. Army COE Section 404 Permit Issuance, San Diego County, CA. *Wait Period Ends:* September 20, 2004. *Contact:* John Chisholm (858) 616–6638.

EIS No. 040385, FINAL EIS, AFS, WA, Crystal Mountain Master Development Plan, To Provide Winter and Summer Recreational Use, Special-Use-Permit, Mt. Baker-Snoqualmie National Forest, Silver Creek Watershed, Pierce County, WA. *Due:* September 20, 2004. *Contact:* Larry Donovan (415) 744–3403. This document is available on the Internet at: *http://www.fs.fed.us/r6/mbs/projects/crystal_eis.*

EIS No. 040386, FINAL EIS, EPA, ADOPTION, Gulf of Mexico Outer Continental Shelf Oil and Gas. *Lease Sales:* 2003–2007, Proposed Reissuance of NPDES General Permit GMG 290000 for New and Existing Sources in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category, Western Portion of Outer Continental Shelf of the Gulf of Mexico. *Wait Period Ends:* September 20, 2004. *Contact:* Hector Pena (214) 665–7453.

U.S. Environmental Protection Agency (EPA) has adopted the U.S. Department of Interior's Minerals Management Service (MMS) FEIS #02459 filed on 11/05/2002. EPA was not a Cooperating Agency on the above FEIS. Recirculation of the document is necessary under Section 1506.3(b) of the CEQ Regulations.

EIS No. 040387, DRAFT EIS, AFS, ID, Caribou Sheep Allotment Management Plan Revision, Authorize Continue Livestock Grazing, Caribou-Targhee National Forest, Palisades Ranger District, Bonneville County, ID. *Comment Period Ends:* October 4, 2004. *Contact:* Greg Hanson (208) 523–1412.

EIS No. 040388, DRAFT EIS, FRC, LA, Sabine Pass Liquefied Natural Gas (LNG) and Pipeline Project, Construction and Operation LNG Import Terminal and Natural Gas Pipeline Facilities, Several Permits, Cameron Parish, LA. *Comment Period Ends:* October 5, 2004. *Contact:* Thomas Russo (866) 208–3372.

EIS No. 040389, DRAFT SUPPLEMENT, FHW, MN, WI MN–36/WI–64 St. Croix River Crossing Project, Construction of a New Crossing between the Cities of Stillwater and Oak Park Heights in Washington County, MN and the Town of St. Joseph in St. Croix County, WI. *Comment Period Ends:* October 4, 2004. *Contact:* Cheryl Martin (651) 291–6120.

EIS No. 040390, DRAFT EIS, FHW, MT U.S. Highway 89 Improvements from Browning to Hudson Bay Divide, Endangered Species Act, NPDES Permit and U.S. Army COE Section 404 Permit, Glacier County, MT. *Comment Period Ends:* October 12, 2004. *Contact:* Dale Paulson (406) 449–5302.

EIS No. 040391, DRAFT EIS, COE, CA Prado Basin Water Supply Feasibility Study, To Increase Conservation of Surplus Water at Prado Dam and Flood Control Basin, Orange County, Water District, Orange, Riverside and San Bernardino Counties, CA. *Comment Period Ends:* October 4, 2004. *Contact:* Alex Watt (213) 452–3860.

EIS No. 040392, DRAFT EIS, AFS, MT West Side Reservoir Post-Fire Project, Proposed Implementation of Timber Salvage and Access Management Treatments, Flathead National Forest, Hungry Horse and Spotted Bear Ranger Districts, Flathead County, MT. *Comment Period Ends:* October 6, 2004. *Contact:* Bryan Donner (406) 863–5408.

EIS No. 040393, FINAL EIS, AFS, AK Gravina Island Timber Sale, Implementation, Timber Harvest and Related Activities, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, AK. *Wait Period Ends:* September 20, 2004. *Contact:* Rob Reeck (907) 228–4114.

Amended Notices

Cottonwood Fire Vegetation Management Project, Control Vegetation Competing with Conifer Seedlings, Sierraville Ranger District, Tahoe National Forest, Sierra County, CA.

Comment Period Ends: September 20, 2004.

Contact: Teri Banka (530) 994–3401 Ext. 6644. Revision of FR Notice published on 8/6/04: Correction to Status from Draft Revise to Draft EIS. Comment Period Still Ends on 9/20/2004.

Dated: August 17, 2004.

Robert W. Hargrove,

Division Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 04–19148 Filed 8–19–04; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0257; FRL–7674–2]

Chlorothalonil; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0257, must be received on or before September 20, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: J. R. Tomerlin, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0598; e-mail address: *tomerlin.bob@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person 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 ID number OPP–2004–0257. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0257. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2004–0257. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0257.

3. *By hand delivery or courier*. Deliver your comments to: Public Information

and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0257. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 12, 2004.

Lois A. Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

PP 3E6795

EPA has received a pesticide petition (PP 3E6795) from the Snowpea Commission of Guatemala, Guatemala City, Guatemala, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180.275 by establishing a tolerance for residues of chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile (SDS–3701) in or on the raw agricultural commodity snow peas at 5 parts per million (ppm). GB Biosciences™ Corporation of Greensboro, NC serves as the agent for the Snowpea Commission of Guatemala. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of chlorothalonil as well as the nature of the residues in plants is adequately understood for purposes of the proposed tolerance. Plant metabolism has been evaluated in five diverse crops: Carrots, celery, lettuce, snap beans, and tomatoes, which should serve to define the similar metabolism of chlorothalonil in a wide range of crops. The qualitative nature of residues in plants for chlorothalonil is adequately understood. The residue of concern is chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile (SDS–3701). Parent metabolite CGA–64250 is the major compound found in crops.

2. *Analytical method*. An adequate residue analytical method (gas chromatography) is available for enforcement purposes. The method is listed in the Pesticide Analytical Manual (PAM) Vol. II (PAM II).

3. *Magnitude of residues*. Field residue trials have been conducted on snap beans at various rates, timing intervals, and applications methods to represent the use patterns which would most likely result in the highest residues. Due to similarity of snap bean and the proposed snow pea use patterns, the field residue trial from snap bean will be used to support a snow pea import tolerance.

B. Toxicological Profile

An assessment of the toxic effects caused by chlorothalonil is discussed in Unit III.A. and Unit III.B. in the **Federal Register** of March 12, 2001 (66 FR 14330) (FRL–6759–4).

1. *Animal metabolism*. The metabolism of chlorothalonil in the rat is adequately understood.

2. *Metabolite toxicology*. The residues of concern for tolerance setting purposes in or on raw agricultural commodity are the parent compound and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile (SDS–3701). The residue of concern in meat and milk is SDS–3701.

3. *Endocrine disruption*. Chlorothalonil does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. Developmental toxicity studies in rats and rabbits and a reproduction study in rats gave no indication that chlorothalonil might have any effects on endocrine function related to development and reproduction. The

subchronic and chronic studies also showed no evidence of a long-term effect related to the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*. Tier II/III acute, chronic, and cancer dietary exposure evaluations were made using the Dietary Exposure Evaluation Model (DEEM™), version 7.87 from Exponent. These exposure assessments included all registered uses and a proposed use on imported snow peas. Empirically derived processing studies for cabbage (0.20X), carrots (0.005X), cherries (0.05X), coffee (0.10X), cucumber/cold canned (0.20X), cucumber/hot canned (0.04X), plums (0.33X), squash (0.001X), tomato juice (0.25X) and tomato paste, puree, and catsup (0.02X) were used in these assessments. All other processing factors used were the DEEM™ defaults. All consumption data was taken from the United States Department of Agriculture's (USDA's) Continuing Survey of Food Intake by Individuals (CSFII) with the 1994–1996 consumption database and the Supplemental CSFII Children's Survey (1998) consumption database.

i. *Food*. For the purposes of assessing potential dietary exposure, Syngenta has estimated aggregate exposure from all crops for which tolerances are established or proposed. These assessments utilized residue data from monitoring data (Pesticide Data Program (PDP), Food and Drug Administration (FDA), and FoodContam) and field trial data where available; otherwise currently established tolerances were used. Field trial residue data for snap beans were used as a surrogate for similarly treated (i.e., application rate and pre-harvest interval) imported snow peas. Current tolerances were used as conservative estimates for secondary residues of chlorothalonil in meat and milk commodities. Percent of crop treated values were conservatively set at 100% for all commodities.

ii. *Drinking water*. Another potential source of exposure of the general population to residues of chlorothalonil are residues in drinking water. Estimated Drinking Water Concentrations (EDWCs) of chlorothalonil in surface and groundwater were typically less than 1 parts per billion (ppb). However, the Environmental Fate and Effects Division (EFED) used an EDWC value of 16 ppb for drinking water assessment, which was derived from metabolite concentration that was measured in groundwater at a combined concentration of 16 ppb in Suffolk County, Long Island, NY in 1981.

The Acute Drinking Water Level of Comparison (DWLOC) was calculated based on an acute reference dose (aRfD) of 0.583 mg/kg/day for the subpopulation of children (1–2 years) and a dietary exposure value of 0.134878 mg/kg-bw/day. For the acute assessment, the acute DWLOC for the children (1–2 years) subpopulation was of 4,481 ppb, which is considerably higher than the acute EDWC of 16 ppb.

The Chronic Drinking Water Level of Comparison (DWLOC) was calculated based on a chronic reference dose (cRfD) of 0.02 mg/kg/day and a dietary exposure value of 0.003984 mg/kg-bw/day. The children 1–2 years old subpopulation had the lowest chronic DWLOC of 160 ppb. Thus, the chronic DWLOC of 160 ppb is considerably higher than the chronic EDWC of 16 ppb.

Cancer risk from chlorothalonil drinking water exposures (upper bound 8×10^{-9}) was considered negligible since the EDWC of chlorothalonil in surface and groundwater were typically less than 1.0 ppb.

2. *Non-dietary exposure*. Based upon the residential use patterns, there is a potential for exposure to chlorothalonil residues for adult homeowners making applications to residential areas (ornamental and vegetable gardens) and also for both youth and adults engaged in post-application activities in these areas. The short- and intermediate-term exposure risk estimates are derived from the same daily (short-/intermediate-term) exposures, since the endpoints are the same for both scenarios. The exposure risks were all determined to be acceptable (margin of exposure (MOE) > 100) for each scenario assessed. The maximum potential non-dietary exposure was for an adult transplanting ornamentals, yielding an average daily dose (ADD) of 1.09 mg/kg-bw/day and a resulting MOE of 551, and a cancer risk of 9.79×10^{-8}. Therefore, cancer exposure risks to chlorothalonil from non-dietary exposures were determined to be negligible.

3. *Acute exposure*. The acute dietary risk assessment was performed for all population subgroups with an aRfD of 0.583 mg/kg-bw/day based upon an acute lowest observable adverse effect level (LOAEL) of 175 mg/kg-bw/day from a subchronic dietary rat study and an uncertainty factor of 300X (100X plus additional 3X for the absence of a no observable adverse effect level (NOAEL)). For the purpose of the aggregate risk assessment, the exposure value was expressed in terms of MOE, which was calculated by dividing the LOAEL by the exposure. In addition, exposure was expressed as a percent of the acute reference dose (%aRfD). Acute exposure for the most sensitive subpopulation (children 1–2 years old) was 23.1% of the acute RfD of 0.583 mg/kg-bw/day, with a MOE of 1,297. Since the benchmark MOE for this assessment was 300 and since EPA generally has no concern for exposures above the benchmark MOE, Syngenta believes that there is a reasonable certainty that no harm will result from the acute dietary (food) exposures arising from the current and proposed uses for chlorothalonil.

4. *Chronic exposure*. The cRfD for chlorothalonil is 0.02 mg/kg-bw/day and is based on a chronic rat study with a NOAEL of 2.0 mg/kg-bw/day and an uncertainty factor of 100X. No additional FQPA safety factor was applied. The chlorothalonil Tier II/III chronic dietary exposure assessment was based upon monitoring data and residue field trial results. For the purpose of the aggregate risk assessment, the exposure values were expressed in terms of MOE, which was calculated by dividing the NOAEL by the exposure for each population subgroup. In addition, exposure was expressed as a percent of the chronic reference dose (%cRfD). Chronic exposure to the most sensitive subpopulation (children 1–2 years old) was 19.9% of the cRfD of 0.02 mg/kg-bw/day, with an MOE of 502. Since the benchmark MOE for this assessment was 100 and since EPA generally has no concern for exposures resulting in an MOE above the benchmark MOE, Syngenta believes that there is a reasonable certainty that no harm will result from the chronic dietary (food) exposures arising from the current and proposed uses for chlorothalonil.

5. *Cancer exposure*. A cancer dietary risk assessment was performed for all population subgroups, with a carcinogenic potency factor (Q*) of 0.0077 $(mg/kg\text{-}bw/day)^{-1}$, based upon female rat renal tumor rates. Cancer exposure to chlorothalonil results in a risk of 5.67×10^{-7}, or approximately 0.6 in one million, which is within the safe level of concern set by the EPA of 1.00×10^{-6}.

D. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA does not have, at this time, available data to determine whether chlorothalonil has a

common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, EPA has not assumed that chlorothalonil has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* The acute and chronic aggregate exposure estimates are well below the aRfD of 0.583 mg/kg-bw/day and cRfD of 0.020 mg/kg-bw/day for all population subgroups. Aggregate cancer exposure estimates for the U.S. population were approximately 67% of the one-in-a-million exposure limit. Based on this information, Syngenta Crop Protection concludes, that there is reasonable certainty that no harm will result from acute, chronic, or cancer exposure to chlorothalonil.

2. *Infants and children.* Since the acute chronic aggregate exposure assessments for infants and children are well below the aRfD and cRfD of 0.583 mg/kg-bw/day and 0.02 mg/kg-bw/day respectively, there is reasonable certainty that no harm will result to infants and children from aggregate exposure to chlorothalonil residues.

F. International Tolerances

There is currently no maximum residue level (MRL) set for chlorothalonil on snow peas by the Codex Alimentarius Commission.

[FR Doc. 04–19032 Filed 8–19–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7803–5]

Proposed Consent Agreement and Covenant Not To Sue Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act of 1986; In Re: Elizabeth Mine Superfund Site, Located in South Strafford and Thetford, VT

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed agreement; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601, *et. seq.,* notice is hereby given of a proposed Consent Agreement between the United States, on behalf of the U.S. Environmental Protection Agency (''EPA'') and Theodore Zagaeski (''Settling Party''). Under the terms of the proposed Agreement, Zagaeski will allow EPA to access and use up to 200,000 cubic yards of borrow material. Zagaeski will also allow continued access to the Site and agree to implement institutional controls at the Site. In exchange for this consideration, EPA will grant Zagaeski a covenant not to sue under sections 106 and 107(a) of CERCLA with regard to the site. Additionally, Zagaeski will be entitled to contribution protection for ''matters addressed'' in the Agreement.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at One Congress Street, Boston, MA 02214.

DATES: Comments must be submitted on or before September 20, 2004.

ADDRESSES: Comments should be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RAA, Boston, Massachusetts 02203, and should refer to: In re: Elizabeth Mine Superfund Site, U.S. EPA Docket No. CERCLA–01–2001–0054.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed Consent Agreement can be obtained from Steven Schlang, U.S. Environmental Protection Agency, Region I, One Congress Street, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1773.

Dated: August 12, 2004.

Susan Studlien,

Director of Office of Site Remediation and Restoration, Region I.

[FR Doc. 04–19151 Filed 8–19–04; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to finance the export of approximately $14 million in U.S. equipment to a polystyrene production facility in Russia. The U.S. exports will enable the facility to produce approximately 50,000 metric tons of polystyrene per year. Initial production is expected to commence in 2006. Available information indicates that this new production will be consumed in Russia, China and Eastern Europe. Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 04–19052 Filed 8–19–04; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

August 10, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before October 19, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by

this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: OMB Control Number: 3060–1064.

Title: Regulatory Fee Assessment Notifications.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and State, local or tribal government.

Number of Respondents: 1,130.

Estimated Time per Response: .25 hours (15 minutes).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 283 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Each year the Commission collects Congressionally-mandated regulatory fees from its regulates based on a schedule of fees that it establishes in an annual rulemaking proceeding. In the past years, the Commission pulled licensee addresses from its databases and mailed to these licensees Public Notices that (1) announced when regulatory fees are due; and (2) provided guidance for making fee payments. For the FY 2004 regulatory season, the Commission is going to send fee assessments to cable TV operators, media services licensees, and commercial mobile radio service (CMRS) licensees so that they have an opportunity to counter, update or rectify basic license data and assessed fee amounts well before the actual due date for submission or regulatory fee payments. We will use the information to update our database.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–19141 Filed 8–19–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 04–191; FCC 04–114]

San Francisco Unified School District

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document designates the application of the San Francisco Unified School District for renewal of license of KALW(FM), San Francisco, California, for an evidentiary hearing on issues relating to its qualifications to remain a Commission licensee.

DATES: Petitions by persons desiring to participate as a party in the hearing may be filed not later than September 20, 2004. *See* **SUPPLEMENTARY INFORMATION** section for dates that named parties should file appearances.

ADDRESSES: Please file documents with the Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 3–B443, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James Shook, Special Counsel, Investigations and Hearings Division, Enforcement Bureau at (202) 418–1448; Dana E. Leavitt, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau at (202) 418–1317; or Michael Wagner, Assistant Chief, Audio Division, Media Bureau at (202) 418–2775.

SUPPLEMENTARY INFORMATION: This is a summary of the Hearing Designation Order, FCC04–114, released July 16, 2004. The full text of the Hearing Designation Order 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 may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Synopsis of the Order

1. The San Francisco Unified School District (''SFUSD'') timely applied for license renewal for its station KALW(FM) on August 1, 1997. Golden Gate Public Radio filed a petition to deny that application on November 3, 1997, alleging both substantive rule violations and misrepresentations. Specifically, Golden Gate PUBLIC Radio alleged that SFUSD failed to adequately maintain its local public inspection file by failing to include in the file supplemental ownership reports and issues/programs lists as required by 47 CFR 73.3527 while knowingly certifying in the license renewal application that all these reports and lists were contained in the file. Similarly, Golden Gate Public Radio allege that the licensee failed to comply with the Commission's Equal Employment Opportunity requirements then in effect, while certifying in its renewal application that it had done so. San Francisco Unified School District, in opposition, argued that (1) Golden Gate Public Radio did not establish a substantial and material question of fact to warrant designation of the KALW(FM) license renewal application for hearing.

2. Intitially, the Commission Bureau has reviewed the Golden Gate Public Radio petition and found several procedural infirmities: the petitioner did not demonstrated standing to challenge the renewal application, and the petition was neither properly served on SFUSD nor properly verified under the Commission's rules. The Commission therefore treated the filing as an informal objection rather than as a formal petition to deny.

3. Upon reviewing of the record in this case—primarily the Golden Gate Public Radio petition and San Francisco Unified School District's response to two staff inquiries—the Commission found that the KALW(FM) public inspection file did not contain all of the requisite supplemental ownership reports and quarterly issues/programs lists when the subject renewal application was filed. Additionally, the Commission stated that it appeared that several staff members advised KALW(FM)'s station management that the public file was incomplete, which advice the station management either disbelieved or disregarded. Thus, the Commission found both that SFUSD made a false certification with respect to the contents of the KALW(FM) public inspection file in the renewal application, and that Golden Gate Public Radio had raised a substantial and material question of fact concerning whether San Francisco Unified School District intended to deceive the Commission in making that false certification. The Commission therefore designated the KALW(FM) license renewal application for evidentiary hearing, specifying the following false certification and misrepresentation issues:

1. To determine whether San Francisco Unified School District falsely

certified its application with respect to the completeness of the KALW(FM) public inspection file and the effect thereof on its qualifications to be a Commission licensee.

2. To determine whether San Francisco Unified School District made misrepresentations of fact or was lacking in candor and/or violated Section 73.1015 of the Commission's Rules with regard to its certification in the subject license renewal application that it had placed in the KALW(FM) public inspection file at the appropriate times the documentation required by Section 73.3527, and the effect thereof on its qualifications to be a Commission licensee.

3. To determine, in light of the evidence adduced pursuant to the specified issues, if the captioned application for renewal of license for station KALW(FM) should be granted.

4. Additionally, Golden Gate Public Radio argued that the licensee SFUSD falsely certified that it complied with the Commission Equal Employment Opportunity requirements in effect at the time the renewal application was filed. The Commission Equal Employment Opportunity program requirements at issue in this case were declared unconstitutional by the Court of Appeals for the District of Columbia Circuit in 1998. Nevertheless, those requirements were in effect during the KALW(FM) license term here, as well as when the subject renewal application was filed, and applicants are not excused from accurately representing their compliance with those rules by their subsequent invalidation. The Commission found that there may have been minor deficiencies in the dissemination of San Francisco Unified School District's Equal Employment Opportunity program during the subject license term, and thus its representations in the KALW(FM) renewal application regarding the station's compliance with the Commission's Equal Employment Opportunity rules and policies appeared to be incorrect. The Commission finds, however, that the evidence presented by Golden Gate Public Radio and the record as a whole are insufficient to raise a substantial and material question as to whether San Francisco Unified School District intended to deceive the Commission by making a false certification regarding its compliance with the Commission's then-existing Equal Employment Opportunity rules. The Commission nevertheless cautioned the licensee that it should exercise more care in the future to ensure that the information it submits to the Commission is accurate, because a false statement, even absent an intent to deceive, may constitute a violation of 47 CFR 1.17.

5. Copies of this Order, are to be sent by certified mail, return receipt requested, to the parties and counsel. To avail themselves of the opportunity to be heard, Golden Gate Public Radio and San Francisco Unified School District to 47 CFR 1.221, in person or by their respective attorneys, must within twenty (20) days of the mailing of the Order, file in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. San Francisco Unified School District pursuant to 47 CFR 73.3594, shall give notice of the hearing within the time and in the manner prescribed in 47 CFR 73.3594, and shall advise the Commission of the publication of such notice as required by 47 CFR 73.3594(g).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–19144 Filed 8–19–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2669]

Petition for Reconsideration and Clarification of Action in Rulemaking Proceeding

August 10, 2004.

Petition for Reconsideration and Clarification has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing an copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by September 7, 2004. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of the Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Practices (MM Docket No. 98–204)

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–19145 Filed 8–19–04; 8:45 am]

BILLING CODE 4712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 8:02 a.m. on Monday, August 16, 2004, the Board of Directors of the Federal Deposit Insurance Corporation met in open session to consider the following matters:

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Notice of Proposed Rulemaking—Community Reinvestment Act Regulations.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Office of Thrift Supervision), seconded by Vice Chairman John C. Reich, and concurred in by Chairman Donald E. Powell, with Director Thomas J. Curry and Director John D. Hawke, Jr. (Comptroller of the Currency) opposing; that Corporation business required its consideration of the matters on less than seven days' notice to the public; and that no earlier notice of the meeting than that previously provided on August 12, 2004, was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: August 16, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E4–1850 Filed 8–19–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are

set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 6, 2004.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Billy Grant Taylor and Raymond Davis King, Jr., both of Muskogee, Oklahoma; to acquire additional voting shares of Armstrong Bancshares, Inc., Vian, Oklahoma, and thereby indirectly acquire additional voting shares of Armstrong Bank, Muskogee, Oklahoma.

Board of Governors of the Federal Reserve System, August 16, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–19122 Filed 8–19–04; 8:45 am]

BILLING CODE 6210–01–S

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 September 16, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Great Financial Corporation, Miami Lakes, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Great Florida Bank, Miami, Florida.

Board of Governors of the Federal Reserve System, August 16, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–19121 Filed 8–19–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date: September 1, 2004, 9 a.m.–3 p.m.; September 2, 2004, 10 a.m.–3:30 p.m.

Place: Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 705A, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the Committee will hear updates and status reports from the Department including topics such as Clinical Data Standards, the Consolidated Health Informatics Initiative, and the HIPAA Privacy Rule. In the afternoon the Committee will discuss various materials prepared by its Subcommittees. On the second day the Committee will be briefed on the recent Executive Subcommittee retreat, the July HHS NHII Conference, and the National Institutes of Health's (NIH) Roadmap for the future plan. There will also be reports from the Subcommittees and discussion of agendas for future Committee meetings.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions are scheduled for late in the afternoon of the first day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: August 11, 2004.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 04–19088 Filed 8–19–04; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Global Health Affairs; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Part A, as last amended at 61 FR 21470, dated, May 10, 1996; Chapter AA, Immediate Office of the Secretary, as last amended at 44 FR 31045, dated May 30, 1979, more recently by a memorandum dated September 3, 2002; Chapter AN, ''Office of the Assistant Secretary for Public Health Emergency Preparedness, as last amended at 67 FR 71568–70, dated December 12, 2002; and Part A, Office of the Secretary, as last amended at 60 FR 56605–06, and more recently at 61 FR 21470, dated May 10, 1996. This Notice will do the following: establish a new Staff Division (STAFFDIV), Chapter AQ, ''Office of Global Health Affairs (OGHA)'' within the Office of the Secretary; retitle the Office of the Assistant Secretary for Public Health Emergency Preparedness, as the Office of Public Health Emergency Preparedness (OPHEP); and include the OGHA (AQ), the OPHEP (AN), and the Federal Occupational Health Service (PG) and associated staff in the U.S. Public Health Service.

The OGHA is being elevated to emphasize the importance of its primary responsibility, which is to ensure a ''One Department'' approach to all HHS-

related international matters. It also). The changes are as follows:

I. Under Chapter AA, make the following changes:

A. Under Section AA.10 Organization, delete the ''Office of Global Health Affairs AAE,'' and replace with the ''Office of Global Health Affairs AQ''

B. Under Section AA.20 Function, delete the ''Office of Global Health Affairs (AAE),'' in its entirety.

II. Under Part A, establish a new Chapter AQ, ''Office of Global Health Affairs (OGHA),'' to read as follows:

SECTION AQ.00 MISSION

SECTION AQ.10 ORGANIZATION

SECTION AQ.20 FUNCTIONS

Section AQ.00 Mission. The mission of the Office of Global Health Affairs (OGHA) is to provide policy advice and direction to the Secretary, Deputy Secretary and other Department of Health and Human Services (HHS) senior officials in the area of international health, family and social affairs, including health diplomacy in support of U.S. foreign policy. OGHA's mission is to ensure a centralized and coordinated approach to all international matters to promote the health of the world's population by advancing the U.S. and HHS' global strategies and partnerships, thus serving the health of the people of the United States.

Section AQ.10 Organization: The Office of Global Health Affairs (OGHA) is headed by a Director who reports directly to the Secretary.

Section AQ.20 Functions: Office of Global Health Affairs (AQ)—The Office of Global Health Affairs (OGHA) is headed by a Director who reports directly to the Secretary. It receives most of its administrative support from the Office of the Secretary Executive Office (OSEO), but retains primary responsibility for budget and travel management. OGHA advises the Secretary and other senior officials on activities that are of a global nature, including international travel, meetings, and presentations. The Office of Global Health Affairs is responsible for ensuring a centralized approach to all international matters in the following areas: represents the Secretary and other senior officials in international negotiations on health, family and social matters; coordinates and leads Departmental participation in the meetings of multilateral organizations, including the World Health Organization, the Pan American Health Organization, the United Nations Children's Fund (UNICEF), the Global Fund to Fight AIDS, Tuberculosis and Malaria, the United Nations AIDS Programme (UNIAIDS), and other international agencies; represents the Department in relevant interagency working groups convened by the National Security Council, the Domestic Policy Council and the Office of the U.S. Trade Representative; in consultation with appropriate OPDIV and STAFFDIV leadership and staff, clears all documents related to international health, family and social affairs; coordinates and reviews international travel and long-term international assignments and details for all Departmental employees—including civil servants and members of the Commissioned Corps, and special government employees; promotes cooperative health programs with other countries; coordinates the Department's technical and policy-related input into international humanitarian issues and international and domestic refugee health issues; represents the Department on international health issues with other federal departments and agencies, international organizations, the private sector and foreign countries; carries out the Department's responsibilities under the U.S. Exchange Visitor Program; and, ensures protocol at all international functions and events.

III. Under Chapter AN, Office of the Assistant Secretary for Public Health Emergency Preparedness, make the following changes:

Retitle chapter AN, ''Office of the Assistant Secretary for Public Health Emergency Preparedness (OASPHEP)'' as the ''Office of Public Health Emergency Preparedness (OPHEP)'' and change all references within HHS of OASPHEP to read OPHEP.

IV. *Continuation of Policy:* Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to the Office of Global Health Affairs heretofore issued and in effect prior to this reorganization are continued in full force and effect.

V. *Delegation of Authority:* All delegations and redelegations of authority made to officials and employees of the Office of Global Health Affairs will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

VI. *Funds, Personnel, and Equipment:* Transfer of organizations and functions affected by this reorganization shall be accompanied by direct and support funds, positions, personnel, records, equipment, supplies and other sources.

VII. *Continuation of the Public Health Service:* Delete Paragraph VI, title ''Continuation of the Public Health Service,'' as last amended at 61 FR 21470, dated May 10, 1996, and replace with the following:

Continuation of the U.S. Public Health Service: Within the Department of Health and Human Services, the U.S. Public Health Service Operating Divisions, the Office of Public Health and Science, the Office of Global Health Affairs (AQ), the Office of Public Health Emergency Preparedness (AN), and the Federal Occupational Health Service (PG) and associated staff shall constitute the U.S. Public Health Service.

Dated: August 11, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–19087 Filed 8–19–04; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–312, CMS–102/CMS–105, and CMS–18F5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection.

Title of Information Collection: Conflict of Interest and Ownership and Control Information.

Form No.: CMS–R–312 (OMB #: 0938–0795).

Use: This information is required by Public Law 95–142 as a condition of participation in the Medicare program. The Fiscal Intermediaries and Carriers are contractually required as a condition for renewal of their contracts to submit to CMS any ownership and control interest information.

Frequency: Annually.

Affected Public: Not-for-profit institutions and Business or other for-profit.

Number of Respondents: 37.

Total Annual Responses: 37.

Total Annual Hours: 11,100.

2. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: CLIA Budget Workload Reports and Supporting Regulations Contained in 42 CFR 493.1-.2001.

Form No.: CMS–102 and CMS–105.

OMB #: 0938–0599.

Use: Information collected will be used by CMS in determining the amount of Federal Reimbursement for compliance surveys. Use of the information includes program evaluation, audit, budget formulation, and budget approval.

Frequency: Quarterly and Annually.

Affected Public: State, Local, or Tribal Government.

Number of Respondents: 50.

Total Annual Responses: 50.

Total Annual Hours: 4,500.

3. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Application for Hospital Insurance and Supporting Regulations in 42 CFR 406.7.

Form No.: CMS–18F5.

OMB #: 0938–0251.

Use: The CMS–18F5 is used to establish entitlement to Hospital Insurance and Supplementary Medical Insurance for beneficiaries entitled under Title XVIII of the Social Security Act. The HCFA–18F5-SP is included in this renewal. (The Agency name change on the Spanish language form has not been done because there is still stock on hand.)

Frequency: On occasion.

Affected Public: Individuals or Households, Business or other for-profit, Not-for-profit institutions, Farms, Federal government, and State, local, or tribal gov.

Number or Respondents: 50,000.

Total Annual Responses: 50,000.

Total Annual Hours: 12,500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office at (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 6, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–18619 Filed 8–19–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10109]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Hospital Reporting Initiative—Hospital Quality Measures.

Use: The purpose is to collect data to produce valid, reliable, comparable, and salient quality measures to provide a potent stimulus for clinicians and providers to improve the quality of care they provide. This reporting initiative in which hospitals may participate is a significant step toward a more informed public and a means to sustain health care quality improvement. The data is currently being collected from hospitals by CMS. The hospitals submitting data have volunteered to participate in public reporting. This effort places no additional data collection requirements or burdens on hospitals. Section 501(b) of the MMA offers monetary incentives for hospitals participating in reporting.

Form Number: CMS–10109.

OMB #: 0938–0918.

Frequency: Quarterly.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Number of Respondents: 4,000.

Total Annual Responses: 16,000.

Total Annual Hours: 238,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 6, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–18620 Filed 8–19–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Deviation From Competition for Change in Scope and a Supplement to ARC of the United States ''Medicaid Reference Desk''

AGENCY: Administration on Developmental Disabilities, ACF, FDHHS.

ACTION: Notice.

SUMMARY: The original and proposed objectives were designed to address the needs of people to have a timely access to information regarding the structure and functioning of State Medicaid programs and Federal level changes that have an impact on State systems of support and also provide a Web site that includes developing highly accessible alternative formats for delivering information to individuals with various disabilities through technology.

The ARC of the United States, the Administration on Developmental Disabilities and the Centers for Medicare and Medicaid Services (CMS) will partner to implement the ''Guide to Choosing a Medicare Approved Drug Discount Card'' to include a web-based product with audio and video clips for individuals with intellectual disabilities and limited literacy skills. This will be accomplished by the Centers for Medicare and Medicaid Services providing funding to supplement this grant in the amount of $12,000. This grant can be accomplished within the period of 30 days to coincide with the ongoing project period which will end September 30, 2004.

This supplement will allow the ARC of the United States to translate an on-line resource for States and organizations a plain language version of the ''Guide to Choosing a Medicare Approved Drug Discount Card.'' The translation will include brief audio and video clips explaining each important detail specified in the Guide. This will increase peoples understanding especially those with language and literacy needs. Making this resource available directly to States and to the wide network of advocacy organizations will prevent a great deal of confusion and even more, it will save ADD and CMS personnel countless hours in telephone and on-site personal assistance.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families (ACF), Debbie Powell, Director, Office of Operations and Discretionary Grants, 370 L'Enfant Promenade, SW., MS 405D, Washington, DC 20447, Telephone: (202) 690–6590.

Dated: August 13, 2004.

Patricia A. Morrissey,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 04–19173 Filed 8–19–04; 8:45 am]

BILLING CODE 4184–01–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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Development and Application of High-Throughput Proteomics Technologies.

Date: September 14, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Lalita D. Palekar, PhD. Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405. (301) 496–7575.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number, and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19083 Filed 8–19–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of information and the discussions would be likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: August 30–31, 2004.

Open: August 30, 2004, 8 a.m. to 4 p.m.

Agenda: Translating Research into Clinical Practice.

Place: Grand Hyatt San Francisco, 345 Stockton Street, San Francisco, CA 94108.

Closed: August 31, 2004, 9 a.m. to 12 p.m.

Agenda: To review and evaluate prepublication manuscripts on Translating Research into Clinical Practices.

Place: Grand Hyatt San Francisco, 345 Stockton Street, San Francisco, CA 94108.

Contact Person: Maureen O. Wilson, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20892, (301) 496–1148.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19130 Filed 8–19–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

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.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: September 10, 2004.

Closed: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Open: 2 p.m. to adjournment.

Agenda: The agenda includes Opening Remarks by Director, NCCAM, NCCAM's second five-year Strategic Plan and other business of the Council.

Place: Neuroscience Conference Center, 6001 Executive Boulevard, Conference Rooms C and D, Rockville, MD 20892.

Contact Person: Jane F. Kinsel, Ph.D., M.B.A., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 496–6701.

The public comments session is scheduled from 4:30–5 p.m. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Jane Kinsel, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, (301) 496–6701, Fax: (301) 480–0087. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m., on August 31, 2004. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Jane Kinsel at the address listed above up to ten calendar days (September 20, 2004) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by contacting Dr. Jane Kinsel, Executive Secretary, NACCAM, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, (301) 496–6701, Fax (301) 480–0087, or via e-mail at *naccames@mail.nih.gov.*

Dated: August 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 04–19074 Filed 8–19–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Name of Committee: National Advisory Eye Council.

Date: September 9–10, 2004.

Open: September 9, 2004, 8:30 a.m. to 5 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: September 10, 2004, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lore Anne McNicol, Director, Division of Extramural Research, National Eye Institute, National Institutes of Health, Bethesda, MD 20892, (301) 451–2020.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nei.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: August 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19133 Filed 8–19–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of 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 meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings 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 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 Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: September 27, 2004.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, (301) 496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: September 27, 2004.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, (301) 496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: September 27, 2004.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director and the Institute's Director of Intramural Research.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, E1/E2, Bethesda, MD 20892.

Closed: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, E1/E2, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, (301) 496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: September 27, 2004.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, (301) 496–7291.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.niad.nih.gov/facts/facts.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19072 Filed 8–19–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 EE (22—B–Start Mail Review.

Date: August 23, 2004.

Time: 8 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAAA/Fishers Building, 5635 Fishers Lane, 3043, MSC 9304, Bethesda, MD 20892.

Contact Person: Dorita Sewell, PhD. Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Research, 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 443–3890, *dsewell@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.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 HH (29)—R21 Application Review.

Date: August 24, 2004.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAAA/Fishers Building, 5635 Fishers Lane, Room 3033, MSC 9304, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jeffrey I. Toward, PhD. Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 435–5337, *jtoward@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. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19073 Filed 8–19–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of 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 meetings of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meetings 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 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 Advisory Council for Biomedical Imaging and Bioengineering, Training and Career Development Subcommittee.

Date: September 13, 2004.

Open: 1 p.m. to 3:45 p.m.

Agenda: Discussion of subcommittee business and a presentation by the Institute Director at 3 p.m.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Joan T. Harmon, Director, Office of Extramural Policies, National Institute of Biomedical Imaging and Bioengineering, NIH, 6707 Democracy Blvd, Suite 200, Bethesda, MD 20892, 301–451–4776, *harmonj@nibib.nih.gov.*

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering, Strategic Plan Development Subcommittee.

Date: September 13, 2004.

Open: 3:45 p.m. to 5:15 p.m.

Agenda: Discussion of subcommittee business.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Joan T. Harmon, Director, Office of Extramural Policies, National Institute of Biomedical Imaging and Bioengineering, NIH, 6707 Democracy Blvd, Suite 200, Bethesda, MD 20892, 301–451–4776, *harmonj@nibib.nih.gov.*

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: September 14, 2004.

Open: 8 a.m. to 11:45 a.m.

Agenda: Program presentations, reports from the Council's two subcommittees, and remarks by the Director of the NIH at 11 a.m.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Closed: 12:45 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Joan T. Harmon, Director, Office of Extramural Policies, National Institute of Biomedical Imaging and Bioengineering, NIH, 6707 Democracy Blvd, Suite 200, Bethesda, MD 20892, 301–451–4776, *harmonj@nibib.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a job I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm*, where an agenda and any additional information for the meeting will be posted when available.

Dated: August 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19075 Filed 8–19–04; 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; 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Partnerships Between Basic and Clinical Researchers in Obesity.

Date: September 30, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: D.G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19076 Filed 8–19–04; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the

National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation of other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: September 20–21, 2004.

Closed: September 20, 2004, 10:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852.

Open: September 20, 2004, 4 p.m. to 5 p.m.

Agenda: Concept clearances and program discussion.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852.

Open: September 21, 2004, 8:30 a.m. to adjournment.

Agenda: Presentation of NIMH Director's report and discussion on NIMH program and policy issues.

Place: National Institutes of Health, Building 1, 1 Center Drive, Wilson Hall, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nimh.nih.gov/council/advis.cfm*, where an agenda and any additional information for the meeting will be posted when available.

(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: August 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19078 Filed 8–19–04; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Web-Based Research Training/Monitoring.

Date: August 20, 2004.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Michael J. Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, (301) 443–3367.

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; 93.2281, 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: August 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19079 Filed 8–19–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 HH–29 Review Of U18 Applications.

Date: September 2, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAAA/Fisher Blvd., 5635 Fishers Lane, Room 3033, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute On Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA, 5635 Fishers Lane, Bethesda, MD 20892–9304. (301) 435–5337, *jtoward @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. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19082 Filed 8–19–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Unsolicited R13 Application.

Date: September 7, 2004.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Roberta Binder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3130, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–7966, *rb169n@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Unsolicited P01 Application.

Date: September 9, 2004.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health/NIAID, 6700–B Rockledge Drive, Bethesda, MD 20895 (Telephone Conference Call).

Contact Person: Nancy B. Saunders, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700–B Rockledge Drive, Room 3134, MSC 7616, Bethesda, MD 20892–7616, (301) 435–3569, *ns120v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Trnasplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19127 Filed 8–19–04; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Name of Committee: National Institute of Mental Health Emphasis Panel, Contracts SBIR.

Date: August 26, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

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) 443–1225,, *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: August 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19128 Filed 8–19–04; 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 Initial Review Group, Services Research Review Committee.

Date: October 13–14, 2004.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, (301) 402–8152, *mbroitma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93281, 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: August 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19129 Filed 8–19–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Special Emphasis Panel, T32 Institutional Training Grants.

Date: October 20, 2004.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel and Executive Meeting Center, Rockville, MD 20852.

Contact Person: Jeffrey M. Chernak, PhD, Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: August 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19131 Filed 8–19–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 property.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: October 21–22, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel and Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jeffrey M. Chernak, PhD, Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: August 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19132 Filed 8–19–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of 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 meetings of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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 Advisory Neurological Disorders and Stroke Council, Infrastructure, Neuroinformatics and Computational Neuroscience Subcommittee.

Date: September 8, 2004.

Time: 8 p.m. to 10 p.m.

Agenda: To discuss research mechanisms and infrastructure needs.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Baughman, MD, Associate Director for Technology Development, National Institutes of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2137, MSC 9527, Bethesda, MD 20892–9527, (301) 496–1779.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Clinical Trials Subcommittee.

Date: September 9, 2004.

Open: 8 a.m. to 8:30 a.m.

Agenda: To discuss clinical trial policy.

Place: National Institutes of Health, Building 1, 1 Center Drive, Wilson Hall, Bethesda, MD 20892.

Closed: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 1, 1 Center Drive, Wilson Hall, Bethesda, MD 20892.

Contact Person: John Marler, MD, Associate Director for Clinical Trials, National Institutes of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2216, Bethesda, MD 20892, (301) 496–9135. *jm137f@nih.gov.*

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Training and Career Development Subcommittee.

Date: September 9, 2004.

Time: 8 a.m. to 10 a.m.

Agenda: To discuss the training programs of the Institute.

Place: National Institutes of Health, Building 31, 31 Center Drive, Room 8A28, Bethesda, MD 20892.

Contact Person: Margaret Jacobs, Acting Training and Special Programs Officer, National Institutes of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2154, MSC 9527, Bethesda, MD 20892–9527, (301) 496–4188, *mj22o@nih.gov.*

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: September 9–10, 2004.

Open: September 9, 2004, 10:30 a.m. to 5 p.m.

Agenda: Report by the Director, NINDS; Report by the Acting Director, Division of Extramural Research and other administrative and program developments.

Place: National Institutes of Health, Building 1, 1 Center Drive, Wilson Hall, Bethesda, MD 20892.

Closed: September 10, 2004, 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 1, 1 Center Drive, Wilson Hall, Bethesda, MD 20892.

Contact Person: Alan L. Willard, PhD, Acting Director, Division of Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19134 Filed 8–19–04; 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 Musculoskeltal and Skin Diseases Special Emphasis Panel; Review of Mentored Patient-Oriented Research Career Development Award (K23) and Midcareer Investigator Award in Patient-Oriented Research (K24).

Date: August 24, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Tommy L. Broadwater, Phd, Chief, Review Branch, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20892, *broadwat@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.

Name of Committee: National Institute of Arthritis and Musculoskeltal and Skin Diseases Special Emphasis Panel; Review of Research Project Applications (R01s).

Date: August 25, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Tommy L. Broadwater, PhD, Chief, Review Branch, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20892, *broadwat@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. 93.846, Arthritis, Musculoskeltal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 10, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19135 Filed 8–19–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual other conducted by the National Library of Medicine, including consideration of personnel qualifications and performances, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine, National Center for Biotechnology Information.

Date: October 14, 2004.

Open: 9 a.m. to 12 p.m.

Agenda: Program discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: 12 p.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: 2 p.m. to 5 p.m.

Agenda: Program discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, Natl Ctr For Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19081 Filed 8–19–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice

is hereby given of a meeting of the Recombinant DNA Advisory Committee (RAC), including a Safety Symposium on Recombinant DNA Research with Pathogenic Viruses.

The Symposium entitled ''Safety Considerations in Recombinant DNA Research with Pathogenic Viruses'' will be held on September 21, 2004 from 8 a.m. to 5 p.m. and September 22nd from 8 a.m. to 12 p.m. at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The RAC meeting will be held from 8 a.m. to 3 p.m. on September 23, 2004 at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814. The Committee will review human gene transfer protocol for use of an adeno-associated virus expressing the 293 bp human neuropeptide Y (NPY) open reading frame DNA under the transcriptional control of the CMV enhancer/chicken b-actin (CBA) hybrid promoter in subjects with intractable mesial temporal lobe epilepsy. The RAC meeting also includes the Data Management report and an update from the Clinical Trial Design Working Group.

Contact Person: Stephen M. Rose, Ph.D., Executive Secretary, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892, (301) 496–9838. *sr8j@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www4.od.nih.gov/oba/*, where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecules techniques could be used, it has been determined not too be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

The meetings will be open to the public as indicated above, 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 above in advance of the meeting.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 12, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19080 Filed 8–19–04; 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 meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Food Allergy and Asthma.

Date: August 17, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@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, Immunology: Immune Aspects of SLE.

Date: August 20, 2004.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222, *nigidas@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SBIB–R(90) Bone Imaging.

Date: September 28, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Hector Lopez, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–2392, *lopezh@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846—93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 11, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19077 Filed 8–19–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Announcement of and Request for Public Comment on Substances Nominated to the National Toxicology Program (NTP) for Toxicological Studies and Study Recommendations Made by the NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC)

SUMMARY: The National Toxicology Program (NTP) continuously solicits and accepts nominations for toxicological studies to be undertaken by the program. Nominations of substances of potential human health concern are received from Federal agencies, the public, and other interested parties. These nominations are subject to several levels of review before selections for testing are made and toxicological studies are designed and implemented. Evaluation by the NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC) is the initial external review step in the NTP's formal selection process for NTP study nominations. On June 24, 2004, the ICCEC met to review 10 new nominations and make study recommendations. This announcement (1) provides brief background information regarding the substances nominated to the NTP for study, (2) presents the ICCEC's study recommendations from its June 24, 2004 meeting, (3) solicits public comment on the nominations and study recommendations, and (4) requests the submission of additional relevant information for consideration by the NTP in its continued evaluation of these nominations. An electronic copy of this announcement, Internet links to electronic versions of supporting documents for each nomination, and further information on the NTP and the NTP Chemical Nomination and Selection Process can be accessed through the NTP Web site: *http://ntp-server.niehs.nih.gov.*

Review of Study Nominations

Evaluation by the ICCEC is the initial external step in the NTP's formal selection process for NTP study nominations. At its meeting on June 24, 2004, the ICCEC reviewed 10 new nominations for NTP studies. For 7 of these nominations, the ICCEC recommended one or more types of toxicological studies, and for 3 nominations, the ICCEC deferred making specific study recommendations pending review of additional information. The nominated substances with Chemical Abstract Service (CAS) Registry numbers, nomination source, nomination rationale, and specific study recommendations are given in the accompanying tables.

The ICCEC is composed of representatives from the U.S. Consumer Product Safety Commission, U.S. Department of Defense, U.S. Environmental Protection Agency (U.S. EPA), U.S. Food and Drug Administration's National Center for Toxicological Research, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry, National Institutes of Health's (NIH) National Cancer Institute, NIH's National Institute of Environmental Health Sciences (NIEHS), National Institute for Occupational Safety and Health, NIH's National Library of Medicine, and the Occupational Safety and Health Administration. The ICCEC meets once or twice annually to evaluate groups of new study nominations and to make recommendations with respect to both specific types of studies and testing priorities.

Request for Public Comment

Interested parties are invited to submit written comments or supplementary information on the nominated substances and study recommendations that appear in the accompanying tables. The NTP welcomes toxicology and carcinogenesis study information from completed, ongoing, or anticipated studies, as well as information on current U.S. production levels, use or consumption patterns, human exposure, environmental occurrence, or public health concerns for any of the nominated substances. The NTP is also interested in identifying appropriate new animal and non-animal models for mechanistic-based research, and as such, solicits comments regarding the use of specific *in vivo* and *in vitro* experimental models to address scientific questions relevant to the nominated substances or issues under consideration. All information received will be considered by the NTP in its continued review of these nominations. Comments or information should be sent to Dr. Scott Masten (contact information below) by October 19, 2004. Persons responding to this request should include their name, affiliation, mailing address, phone, fax, e-mail address and sponsoring organization (if any) with the submission. Written submissions will be made available electronically on the NTP Web site as they are received.

Send comments or information to Dr. Scott A. Masten, Office of Chemical Nomination and Selection, NIEHS/NTP, P.O. Box 12233, MD A3–07, Research Triangle Park, North Carolina 27709; telephone: (919) 541–5710; FAX: (919) 541–3647; e-mail: *masten@niehs.nih.gov.*

Background

The NTP actively seeks to identify and select for study chemicals and other agents for which sufficient information is not available to adequately evaluate potential human health hazards. The NTP accomplishes this goal through a formal open nomination and selection process. Substances considered appropriate for study generally fall into two broad yet overlapping categories: (1) Substances judged to have high concern as a possible public health hazard based on the extent of human exposure and/or suspicion of toxicity and (2) substances for which toxicological data gaps exist and additional studies would aid in assessing potential human health risks, *e.g.* by facilitating cross-species extrapolation or evaluating dose-response relationships. Input is also solicited regarding the nomination of studies that permit the testing of hypotheses to enhance the predictive ability of future NTP studies, address mechanisms of toxicity, or fill significant gaps in the knowledge of the toxicity of classes of chemical, biological, or physical substances. Substances may be studied to evaluate a variety of health-related effects, including but not limited to reproductive and developmental toxicity, genotoxicity, immunotoxicity, neurotoxicity, metabolism and pharmacokinetics, and carcinogenicity. In reviewing and selecting nominated substances, the NTP also considers legislative mandates that require responsible private sector commercial organizations to evaluate their products for health and environmental effects. The possible human health consequences of anticipated or known human exposure, however, remain the over-riding factor in the NTP's decision to study a particular substance.

The review and selection of substances nominated for study is a multi-step process. A broad range of concerns are addressed during this process through the participation of representatives from the NIEHS, Federal agencies represented on the ICCEC, the NTP Board of Scientific Counselors—an external scientific advisory body, the NTP Executive Committee—the NTP Federal interagency policy body, and

the public. This process is described in further detail in a March 2, 2000 **Federal Register** announcement (Volume 65, Number 42, pages 11329–11331). This multi-step evaluative process provides the NTP with direction and guidance to ensure that its testing program addresses toxicological concerns relative to all areas of public health, and furthermore, that there is balance among the types of substances selected for study (*e.g.*, industrial chemicals, consumer products, therapeutic agents). As such, it should be recognized that at any given time, the new study nominations under consideration do not necessarily reflect the overall balance of substances historically or currently being evaluated by the NTP in its toxicology testing program. For further information on NTP toxicology studies (previous or in progress) visit the NTP Web site at *http://ntp-server.niehs.nih.gov.*

Dated: August 10, 2004.

Samuel Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

Substances Nominated to the NTP for Toxicological Studies and Recommendations Made by the NTP Interagency Committee for Chemical Evaluation and Coordination on June 24, 2004

TABLE 1.—SUBSTANCES RECOMMENDED FOR STUDY *

Substance [CAS number]	Nominated by	Nomination rationale	Recommendations for toxicological studies
Bitter orange extract [No CAS No.].	Private Individual	Consumer exposure through increasing dietary supplement use; suspicion of toxicity; lack of adequate toxicity data.	Toxicological studies: —Developmental toxicity —Physiological responses (*e.g.,* cardiovascular and cerebrovascular) —Subchronic toxicity —Toxicokinetics (of constituents) —Studies alone and in combination with caffeine —Studies in rats and possibly miniature pigs.
n-Buityl glycidyl ether [2426–08–6].	National Institute of Environmental Health Sciences.	Suspicion of toxicity based on structural features; positive results in genetic toxicity studies; substantial potential for human exposure and a lack of chronic toxicity data.	Toxicological studies: —Toxicological characterization including reproductive toxicity, carcinogenicity, and analysis of urinary metabolites —Coordinate with voluntary data development activities of the U.S. EPA.
Di-(2-ethylhexyl)phthalate (DEHP) [118–71–7].	U.S. Food and Drug Administration.	Long-term risks associated with medical exposures of infants have not been clearly elucidated; significant knowledge gaps on the toxicokinetics and effects in fetal and neonatal primates of intravenous exposure; further studies will better define risks and benefits of utilizing non-DEHP-containing products.	Toxicological studies: Tiered research programs to address: —Quantitative studies of toxicokinetics and biotransformation following intravenous exposure in neonatal male non-human primates —Assessment of toxicokinetics, reproductive and immune endpoints following acute and subchronic intravenous exposure to neonatal male rats and nonhuman primates.
Ionic liquids 1-Butyl-3-methylimidazolium chloride [79917–90–1] 1-Butyl-1-methylpyrrolidinium chloride [479500–35–1] *N*-Butylpyridinium chloride [1124–64–7].	University of Alabama Center for Green Manufacturing.	Widespread interest as replacements for volatile organic compounds (VOCs) in various applications; lack of toxicity data.	Toxicological studies: —Toxicological characterization —Coordinate research program with the U.S. EPA.
Perfluorinated compounds class study [Mutliple CAS Nos.].	U.S. Environmental Protection Agency.	Presumed widespread human exposure; known toxicity of certain class members; insufficient information to assess hazard/risk across entire structural class.	Toxicological studies: —Tiered research program to include pharmacokinetics, mechanistic, reproductive toxicity, and carcinogenicity studies (for specific compounds, see supporting document available at *http://ntp-server.niehs.nih.gov/NomPage/noms.html)*
Stachybotrys chartarum [67892–26–2].	Private Individual ..... National Institute of Environmental Health Sciences.	Public concern regarding potential non-infectious adverse health effects of fungal exposures in indoor environments; inadequate toxicological data available evaluating potential systemic toxicity from long-term exposure to this organism under relevant exposure scenarios.	Toxicological studies: —Toxicological characterization including immunotoxicity.
Tungsten trioxide [1314–35–8] and fibrous tungsten sub-oxides.	National Cancer Institute.	Important industrial raw materials; one of several metals that may form toxic fibrous "whiskers"; carcinogenic potential of tungsten (vs. cemented tungsten carbide) is not adequately characterized.	Toxicological studies: —Toxicoligical characterization —Genotoxicity —Characterize fiber stability and biopersistence —*In vitro* toxicity to lung cells —Comparative intratracheal toxicity studies with a known hazardous fiber

TABLE 1.—SUBSTANCES RECOMMENDED FOR STUDY *—Continued

Substance [CAS number]	Nominated by	Nomination rationale	Recommendations for toxicological studies
			—Further studies including carcinogenicity will be considered following completion of above.

* **Note:** A recommendation for ''toxicological characterization'' in this table includes studies for genotoxicity, subchronic toxicity, and chronic toxicity/carcinogenicity, as determined to be appropriate during the conceptualization and design of a research program to address toxicological data needs. Though other types of studies (*e.g.*, metabolism, pharmacokinetics, immunotoxicity, reproductive/developmental toxicity) may be conducted as part of a complete toxicological characterization, these types of studies are not listed unless they were specifically recommended.

TABLE 2.—SUBSTANCE FOR WHICH SPECIFIC STUDY RECOMMENDATIONS WERE DEFERRED

Substance [CAS number]	Nominated by	Nominated for	Nomination rationale	Rationale for deferral/further information needed
Butylparaben [94–26–8].	National Institute of Environmental Health Sciences.	—Toxicological characterization including reproductive toxicity studies.	Widespread use in foods, cosmetics, and pharmaceuticals; potential reproductive toxicant; lack of adequate toxicity data.	Further review of data on estrogen receptor binding, pharmacokinetics, dose-response of male reproductive effects, and human exposure.
Decane [124–18–5] ..	National Cancer Institute.	—Carcinogenicity studies.	Widespread industrial use and environmental occurrence as air pollutant; suspicion of carcinogenicity but no adequate carcinogenicity study available.	Review of industry voluntary data development activities coordinated by the U.S. EPA.
Undecane [1120–21–4].	National Cancer Institute.	—Carcinogenicity studies.	Widespread industrial use and environmental occurrence as air pollutant; suspicion of carcinogenicity but no adequate carcinogenicity study available.	Review of industry voluntary data development activities coordinated by the U.S. EPA.

[FR Doc. 04–19136 Filed 8–19–04; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. HHS–2004–ACF–ORR–RE–0004 CFDA 93.576]

ORR Announcement for Services to Recently Arrived Refugees

AGENCY: Office of Refugee Resettlement (ORR), Administration for Children and Families, HHS.

ACTION: Modification to the Standing Announcement published in the **Federal Register** on April 23, 2004 (69 FR 22276). Notice of additional deadline for Priority Area 2—Unanticipated Arrivals, in the Standing Announcement for Services to Recently Arrived Refugees.

SUMMARY: The Office of Refugee Resettlement Standing Announcement for Services to Recently Arrived Refugees, Volume 69, **Federal Register** page number 22276, April 23, 2004, is hereby modified to reflect an additional deadline for the Priority Area 2—Unanticipated Arrivals for FY 2005. This additional deadline encourages applicants to respond to the needs of newly arriving populations.

DATES: October 8, 2004, is the closing date. Please note that all applications must be postmarked by October 8, 2004. Mailed applications postmarked after the closing date will be classified as late. Due to delays in mail delivery to Federal offices, we encourage applicants to use overnight courier service to ensure prompt delivery and receipt.

Announcement Availability: The program announcement and the application materials are available from Sue Benjamin, Office of Refugee Resettlement (ORR), 370 L'Enfant Promenade, SW., 8th Floor West, Washington, DC 20447 and from the ORR Web site at: *http://www.acf.hhs.gov/programs/orr/funding* or *http://www.acf.hhs.gov/grants/open/HHS–2004–ACF–ORR–RE–0004.html.*

Funding Availability: ORR expects to award $1 million in discretionary social service funds.

FOR FURTHER INFORMATION CONTACT: Sue Benjamin, Office of Refugee Resettlement, telephone number 202–401–4851.

Dated: August 11, 2004.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 04–19174 Filed 8–19–04; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Correction for the Modified Standing Announcement for Services to Recently Arrived Refugees

AGENCY: Administration for Children and Families, ACF, DHHS.

Funding Opportunity Title: Modified Standing Announcement for Services to Recently Arrived Refugees.

ACTION: Notice of Correction.

Funding Opportunity Number: HHS–2004–ACF–ORR–RE–0004.

SUMMARY: This notice is to inform interested parties of a clarification made to the Modified Standing Announcement for Services to Recently Arrived Refugees published on Friday, April 23, 2004. The following clarification should be noted:

Clarification of Eligibility for Priority Area 1—Preferred Communities.

Applicants applying for Priority Area 1—Preferred Communities should read Additional Information on Eligibility to prevent confusion as to Eligibility (Eligible Applicants) for this program area.

Eligible applicants are ten national voluntary agencies that currently resettle refugees under a Reception and Placement Cooperative Agreement with the Department of State or with the Department of Homeland Security. Priority Area 1—Preferred Communities is restricted to these agencies because placements of new arrivals occur under the terms of the cooperative agreements, and no other agencies place new arrivals or participate in determining their resettlement sites.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 04–19175 Filed 8–19–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Assessment of the *Reach Out Now* National Teach-In Initiative (OMB No. 0930–0258; Revision)—Under Section 515(b) of the Public Health Service Act (42 U.S.C. 290bb–21), the Center for Substance Abuse Prevention (CSAP) of the Substance Abuse and Mental Health Services Administration (SAMHSA) is directed to develop effective alcohol abuse prevention literature and, to assure the widespread dissemination of prevention materials among States, political subdivisions, and school systems. Each April, SAMHSA collaborates with Scholastic Inc. in the April distribution of *Reach Out Now: Talk to Your Fifth and Sixth Grader About Underage Alcohol Use*, a supplement created and distributed by Scholastic Inc.

Beginning in April 2004, SAMHSA sponsors an annual national Teach-In to foster a conversation with fifth graders on the dangers of early alcohol use; effective in 2005 the Teach-In is being expanded to include sixth graders. State substance abuse prevention directors nominate organizations to participate in this program. The Teach-In program builds upon the highly successful national initiative of the Leadership to Keep Children Alcohol Free, which is focused on preventing alcohol use among children ages 9 to 15 and is spearheaded by more than 40 current and past Governors' spouses, who have held or supported Reach Out Now Teach-Ins in their States.

Organizations that agree to participate in this SAMHSA initiative are asked to provide feedback information about the implementation and results of the Teach-In event in their community school. The table that follows provides an estimate of the annual response burden for the feedback form.

No. of respondents	Responses/respondent	Burden/response (hrs.)	Total burden hours
200	1	.167	34

Written comments and recommendations concerning the proposed information collection should be sent by September 20, 2004 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: August 12, 2004.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–19108 Filed 8–19–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2004 Funding Opportunity

AGENCY: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a Single Source Grant to the North Carolina Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services, intends to award approximately $150,000 (total costs) for a 1-year project to the North Carolina Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. This is not a formal request for applications. Assistance will be provided only to the North Carolina Division of Mental Health, Developmental Disabilities, and Substance Abuse Services based on the receipt of a satisfactory application that is approved through an objective review process.

Funding Opportunity Title: Kannapolis, North Carolina Outreach and Intervention Project (SM 04–014).

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section 509 and 520A of the Public Health Service Act, as amended.

Justification: The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) intends to award a single source grant to the North Carolina Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to assess the need for mental health and substance abuse services in Cabarrus and Rowan Counties, to develop and implement outreach activities to encourage those in need of mental health and/or substance abuse services to seek assistance, and to facilitate service delivery.

Cabarrus and Rowan Counties are in south central North Carolina where the primary employer had been a textile plant owned by a company named Pillotex. In July of 2003, the company went bankrupt and the plant was closed resulting in 4,300 individuals in the two counties losing their jobs. Forty-two percent of the individuals in the two counties have a relative who was affected by the layoff. This closing came at a time when the whole economy of the area was depressed. One-year later 75 percent of the individuals are still unemployed and are facing the loss of their medical benefits either because their benefit period is up or they can no longer pay the large premium involved. The community shows signs of stress as incidences of domestic violence are up over 40 percent and child welfare cases are up over 40 percent as well.

A recent informal survey conducted by the Community Service Center serving Cabarrus and Rowan Counties indicate that the most unmet need is for mental health and substance abuse services. Yet these are individuals who have not had to depend on public service systems their entire life and would be reticent to approach such services even if desperately needed.

This grant is to design and implement community education, prevention, intervention and short term mental health and substance abuse and family treatment services and supports and to work in collaboration with a project steering committee and community partners to provide direct concerted outreach efforts and facilitate the involvement of those in need of such services.

Only the North Carolina Division of Mental Health, Developmental Disabilities and Substance Abuse Services is eligible for funding under this announcement because it is the State of North Carolina that is responsible for the provision of mental health and substance abuse services in the State which it does through regional offices. The regional office that would carry out the responsibilities of the grant would be the Piedmont Behavioral Healthcare. Giving the grant to the State of North Carolina will ensure that the services under this grant are integrated into the existing system of care and is coordinated with other State programs relating to primary health care, education, social services, juvenile services, child welfare, etc.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald Manderscheid, SAMHSA/CMHS, 5600 Fishers Lane, Suite 15C04, Rockville, Maryland 20857; telephone: (301) 443–3343; e-mail: *rmanders@samhsa.gov*.

Dated: August 13, 2004.

Margaret Gilliam,

Acting Associate Administrator for Policy, Planning and Budget.

[FR Doc. 04–19055 Filed 8–19–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Border and Transportation Security; Notice to Nonimmigrant Aliens Subject To Be Enrolled in the United States Visitor and Immigrant Status Indicator Technology System (US–VISIT)

AGENCY: Border and Transportation Security Directorate, DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) has established the United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT), an integrated, automated entry-exit system that records the arrival and departure of aliens; verifies aliens' identities; and authenticates aliens' travel documents through comparison of biometric identifiers. On January 5, 2004, DHS published a Notice in the **Federal Register** at 69 FR 482 designating 115 airports and 14 sea ports for inclusion in the US–VISIT program. US–VISIT was implemented at 115 airports and 14 sea ports on January 5, 2004 by Notice published in the **Federal Register** at 69 FR 482. In addition, pilot programs have been established at 15 air or sea ports to collect biometric information from certain aliens upon their departure from the United States.

This Notice identifies six new ports of entry for inclusion in the US–VISIT program at air and sea ports. This Notice also deletes two ports of entry that were inadvertently included in the January 5, 2004 Notice identifying air and sea ports of entry under US–VISIT. Further, this Notice deletes two ports that were included inadvertently in the exit pilot programs announced on August 3, 2004 at 69 FR 46556, replacing those ports with two airports to maintain the full number of fifteen exit pilot programs.

EFFECTIVE DATE: This Notice is effective August 20, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Hardin, US–VISIT, Border and Transportation Security, Department of Homeland Security, 1616 Fort Myer Drive, 18th Floor, Arlington, VA 22209, telephone (202) 298–5200.

SUPPLEMENTARY INFORMATION:

What Is US–VISIT?

DHS established US–VISIT in accordance with several Congressional mandates requiring that DHS create an integrated, automated entry-exit system that records the arrival and departure of aliens; verifies aliens' identities; and authenticates aliens' travel documents through comparison of biometric identifiers. US–VISIT is part of a continuum of security measures that begins overseas when a person applies for a visa to travel to the United States and continues on through entry and exit at U.S. air and seaports and, eventually, at land border crossings. The US–VISIT program enhances the security of U.S. citizens and visitors by verifying the identity of aliens traveling into or departing from the United States. At the same time, the program facilitates legitimate travel and trade by leveraging technology and the evolving use of biometrics to expedite processing at U.S. borders.

The goals of the program are to:

- Enhance the security of U.S. citizens and visitors
- Facilitate legitimate travel and trade
- Ensure the integrity of the immigration system
- Safeguard the personal privacy of visitors

On January 5, 2004, DHS published an interim rule in the **Federal Register** at 69 FR 468 implementing the first phase of US–VISIT at air and sea ports of entry in the United States. The January 5, 2004 interim rule authorized the Secretary of DHS to:

- Require nonimmigrant aliens seeking admission pursuant to a nonimmigrant visa at an air or sea port of entry designated by Notice in the **Federal Register** to provide fingerprints, photograph(s), or other specified biometric identifiers at time of application for admission or at time of departure; and
- Establish pilot programs at up to fifteen air or sea ports of entry, designated through Notice in the **Federal Register**, through which the Secretary of DHS may require an alien admitted pursuant to a nonimmigrant visa who departs the United States from a designated air or sea port of entry to provide fingerprints, photograph(s), or other specified biometric identifiers, documentation of his or her immigration status in the United States, and such other evidence as may be requested to determine the alien's identity and whether he or she has properly maintained his or her status while in the United States.

On January 5, 2004, DHS published a Notice in the **Federal Register** at 69 FR

482, designating 115 airports and 14 sea ports for the collection of biometric data from certain aliens upon arrival to the United States under the US–VISIT program. Since January 5, 2004, aliens applying for admission pursuant to a nonimmigrant visa at any of the designated arrival air and sea ports have been required to submit fingerprints and photographs. The January 5, 2004 Notice also identified the Baltimore-Washington International Airport and Miami Seaport as ports designated under the exit pilot programs for the collection of biometric information from aliens departing from the United States.

On August 3, 2004, DHS published a Notice in the **Federal Register** at 69 FR 46556 designating thirteen additional ports for implementation of US–VISIT exit pilot programs. The Notice listed all 15 ports authorized to establish exit pilot programs under 8 CFR 215.8(a)(1).

What Does This Notice Do?

First, this Notice adds six ports of entry to the list of ports of entry designated under the US–VISIT program under the January 5, 2004 Notice. These six ports of entry are: Albany International Airport, New York; St. Petersburg/Clearwater International Airport, Florida; Port Everglades seaport, Florida; Andrews Air Force Base, Maryland; New York City seaport, New York; and Port Canaveral, Terminal 10, Florida. These ports are being added as they were originally intended to be part of the initial list of designated ports of entry published on January 5, 2004. Port Everglades, as a suboffice of the Miami seaport, has been collecting US–VISIT data since January, but DHS wishes to clarify all specific physical ports that are part of the US–VISIT program.

Second, this Notice eliminates two ports of entry that were erroneously listed in the January 5, 2004 Notice. Alfred Whitted Airport in St. Petersburg, Florida and the seaport in Jacksonville, Florida are deleted from the list of air and seaports collecting information under US–VISIT. US–VISIT was never deployed at either of these two ports.

Third, this Notice eliminates Agana International Airport (Agana, Guam) and McCarren International Airport (Las Vegas, Nevada) from the list of the fifteen ports designated for implementation of exit pilot programs under US–VISIT. These two airports were included inadvertently in the August 3, 2004 Notice. US–VISIT exit pilot programs have not been deployed at these two airports. In their place, this Notice adds Seattle/Tacoma International Airport (Washington) and Ft. Lauderdale/Hollywood Airport (Florida) to the list of ports included in the US–VISIT exit pilot programs.

The updated, complete lists of all ports of entry designated under US–VISIT are identified below.

DHS deletes one air and one sea port of entry from the list of ports published on January 5, 2004 at 69 FR 482.

The following ports are no longer designated for US–VISIT inspection at time of alien arrival under 8 CFR 235.1(d)(1): St. Petersburg, Florida (Alfred Whitted Airport); Jacksonville, Florida (sea port).

DHS deletes two air ports of entry from the list of ports published on August 3, 2004 at 69 FR 46566.

The following ports are no longer designated for US–VISIT inspection at time of alien departure under 8 CFR 215.8: Agana, Guam (Agana International Airport); Las Vegas, Nevada (McCarren International Airport).

DHS hereby designates the following ports of entry for inclusion in US-VISIT for the collection of information at the time of alien arrival pursuant to 8 CFR 235.1(d)(1):

Airports

Agana, Guam (Agana International Airport)
Aguadilla, Puerto Rico (Rafael Hernandez Airport)
Albuquerque, New Mexico (Albuquerque International Airport)
Anchorage, Alaska (Anchorage International Airport)
Andrews Air Force Base, Maryland
Albany, New York (Albany International Airport)
Aruba (Pre-Flight Inspection)
Atlanta, Georgia (William B. Hartsfield International Airport)
Austin, Texas (Austin Bergstrom International Airport)
Baltimore, Maryland (Baltimore/Washington International Airport)
Bangor, Maine (Bangor International Airport)
Bellingham, Washington (Bellingham International Airport)
Boston, Massachusetts (General Edward Lawrence Logan International Airport)
Brownsville, Texas (Brownsville/South Padre Island Airport)
Buffalo, New York (Greater Buffalo International Airport)
Calgary, Canada (Pre-Flight Inspection)
Chantilly, Virginia (Washington Dulles International Airport)
Charleston, South Carolina (Charleston International Airport)
Charlotte, North Carolina (Charlotte/Douglas International Airport)
Chicago, Illinois (Chicago Midway Airport)
Chicago, Illinois (Chicago O'Hare International Airport)
Cincinnati, Ohio (Cincinnati/Northern Kentucky International Airport)
Cleveland, Ohio (Cleveland Hopkins International Airport)
Columbus, Ohio (Rickenbacker International Airport)
Columbus, Ohio (Port Columbus International Airport)
Dallas/Fort Worth, Texas (Dallas/Fort Worth International Airport)
Del Rio, Texas (Del Rio International Airport)
Denver, Colorado (Denver International Airport)
Detroit, Michigan (Detroit Metropolitan Wayne County Airport)
Dover/Cheswold, Delaware (Delaware Airpark)
Dublin, Ireland (Pre-Flight Inspection)
Edmonton, Canada (Pre-Flight Inspection)
El Paso, Texas (El Paso International Airport)
Erie, Pennsylvania (Erie International Airport)
Fairbanks, Alaska (Fairbanks International Airport)
Fajardo, Puerto Rico (Diego Jimenez Torres Airport)
Fort Lauderdale, Florida (Fort Lauderdale Executive Airport)
Fort Lauderdale, Florida (Fort Lauderdale/Hollywood International Airport)
Fort Myers, Florida (Fort Myers International Airport)
Freeport, Bahamas (Pre-Flight Inspection)
Greenville, South Carolina (Donaldson Center Airport)
Hamilton, Bermuda (Pre-Flight Inspection)
Hartford/Springfield, Connecticut (Bradley International Airport)
Honolulu, Hawaii (Honolulu International Airport)
Houston, Texas (Houston International Airport)
Indianapolis, Indiana (Indianapolis International Airport)
International Falls, Minnesota (Falls International Airport)
Isla Grande, Puerto Rico (Isla Grande Airport)
Jacksonville, Florida (Jacksonville International Airport)
Juneau, Alaska (Juneau International Airport)
Kansas City, Kansas (Kansas City International Airport)
Kenmore, Washington (Kenmore Air Harbor)
Key West, Florida (Key West International Airport)
King County, Washington (King County International Airport)
Kona, Hawaii (Kona International Airport)

Laredo, Texas (Laredo International Airport and Laredo Private Airport)
Las Vegas, Nevada (McCarren International Airport)
Los Angeles, California (Los Angeles International Airport)
Manchester, New Hampshire (Manchester Airport)
Mayaguez, Puerto Rico (Eugenio Maria de Hostos Airport)
McAllen, Texas (McAllen Miller International Airport)
Memphis, Tennessee (Memphis International Airport)
Miami, Florida (Kendall/Tamiami Executive Airport)
Miami, Florida (Miami International Airport)
Milwaukee, Wisconsin (General Mitchell International Airport)
Minneapolis/St. Paul, Minnesota (Montreal, Canada (Pre-Flight Inspection))
Nashville, Tennessee (Nashville International Airport)
Nassau, Bahamas (Pre-Flight Inspection)
New Orleans, Louisiana (New Orleans International Airport)
New York, New York (John F. Kennedy International Airport)
Newark, New Jersey (Newark International Airport)
Norfolk, Virginia (Norfolk International Airport and Norfolk Naval Air Station)
Oakland, California (Metropolitan Oakland International Airport)
Ontario, California (Ontario International Airport)
Opa Locka/Miami, Florida (Opa Locka Airport)
Orlando, Florida (Orlando International Airport)
Orlando/Sanford, Florida (Orlando/Sanford Airport)
Ottawa, Canada (Pre-Flight Inspection)
Philadelphia, Pennsylvania (Philadelphia International Airport)
Phoenix, Arizona (Phoenix Sky Harbor International Airport)
Pittsburgh, Pennsylvania (Pittsburgh International Airport)
Ponce, Puerto Rico (Mercedita Airport)
Portland, Maine (Portland International Jetport Airport)
Portland, Oregon (Portland International Airport)
Portsmouth, New Hampshire (Pease International Tradeport Airport)
Providence, Rhode Island (Theodore Francis Green State Airport)
Raleigh/Durham, North Carolina (Raleigh/Durham International Airport)
Reno, Arizona (Reno/Tahoe International Airport)
Richmond, Virginia (Richmond International Airport)
Sacramento, California (Sacramento International Airport)
Salt Lake City, Utah (Salt Lake City International Airport)
San Antonio, Texas (San Antonio International Airport)
San Diego, California (San Diego International Airport)
San Francisco, California (San Francisco International Airport)
San Jose, California (San Jose International Airport)
San Juan, Puerto Rico (Luis Munoz Marin International Airport)
Sandusky, Ohio (Griffing Sandusky Airport)
Sarasota/Bradenton, Florida (Sarasota-Bradenton International Airport)
Seattle, Washington (Seattle/Tacoma International Airport)
Shannon, Ireland (Pre-Flight Inspection)
Spokane, Washington (Spokane International Airport)
St. Croix, Virgin Island (Alexander Hamilton International Airport)
St. Louis, Missouri (St. Louis International Airport)
St. Lucie, Florida (St. Lucie County International Airport)
St. Petersburg, Florida (St. Petersburg-Clearwater International Airport)
St. Thomas, Virgin Island (Cyril E. King International Airport)
Tampa, Florida (Tampa International Airport)
Teterboro, New Jersey (Teterboro Airport)
Toronto, Canada (Pre-Flight Inspection)
Tucson, Arizona (Tucson International Airport)
Vancouver, Canada (Pre-Flight Inspection)
Victoria, Canada (Pre-Flight Inspection)
West Palm Beach, Florida (Palm Beach International Airport)
Wilmington, North Carolina (Wilmington International Airport)
Winnipeg, Canada (Pre-Flight Inspection)
Yuma, Arizona (Yuma International Airport).

Seaports

Long Beach, California
Miami, Florida
New York City
Port Everglades, Florida
Port Canaveral, Florida
Port Canaveral, Florida (Terminal 10)
San Juan, Puerto Rico
San Pedro, California
Seattle, Washington (Cruise Terminal)
Seattle, Washington
Tampa, Florida (Terminal 3)
Tampa, Florida (Terminal 7)
Vancouver, Canada (Ballantyne Pier)
Vancouver, Canada (Canada Place)
Victoria, Canada (Pre Inspection)
West Palm Beach, Florida.

DHS hereby designates the following ports of entry for inclusion in US–VISIT for the collection of information at the time of departure pursuant to 8 CFR 215.8.

Airports

Baltimore, MD (Baltimore/Washington International Airport)
Newark, New Jersey (Newark International Airport)
Atlanta, Georgia (William B. Hartsfield International Airport)
Chicago, Illinois (O'Hare International Airport)
Philadelphia, Pennsylvania (Philadelphia International Airport)
Dallas/Fort Worth, Texas (Dallas/Fort Worth International Airport)
Detroit, Michigan (Detroit Metropolitan Wayne County Airport)
San Juan, Puerto Rico (Luis Muñoz Marin International Airport)
Phoenix, Arizona (Phoenix Sky Harbor International Airport)
San Francisco, California (San Francisco International Airport)
Seattle, Washington (Seattle/Tacoma International Airport))
Ft. Lauderdale, Florida (Ft. Lauderdale/Hollywood International Airport)
Denver, Colorado (Denver International Airport).

The US–VISIT System Is Maintained Consistent With Privacy and Due Process Principles

As discussed in the January 5, 2004 interim rule, US–VISIT records will be protected consistent with all applicable privacy laws, regulations and US–VISIT's Privacy Policy dated January 16, 2004, which can be found at 69 FR 2608. Those seeking additional information, including nonimmigrant aliens who wish to contest or seek a change of their records, should direct a written request to the US–VISIT Program Office at the following address: Steve Yonkers, Privacy Officer, US–VISIT, Border and Transportation Security, Department of Homeland Security, Washington, DC 20528. Phone (202) 927–5200. Fax (202) 298–5201. E-mail: *USVISITPrivacy@DHS.GOV.* The request should include the requestor's full name, current address and date of birth, and a detailed explanation of the change sought. If the matter cannot be resolved by the Privacy Officer, further appeal for resolution may be made to the DHS Privacy Officer at the following address: Nuala O'Connor Kelly, Chief Privacy Officer, U.S. Department of Homeland Security, Washington, DC 20528, telephone (202) 282–8000, facsimile (202) 772–5036. Please see the January 5, 2004 interim rule at 69 FR 468 for more information about the US–VISIT privacy policy.

Dated: August 18, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–19240 Filed 8–19–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–18840]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) and its working groups will meet to discuss various issues relating to the training and fitness of merchant marine personnel. MERPAC advises the Secretary of Homeland Security on matters relating to the training, qualifications, licensing, and certification of seamen serving in the U.S. merchant marine. All meetings will be open to the public.

DATES: MERPAC will meet on Monday, September 20, 2004, from 8:30 a.m. to 4 p.m. and on Tuesday, September 21, 2004, from 8:30 a.m. to 4 p.m. These meetings may adjourn early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before September 6, 2004. Written material and requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before September 6, 2004.

ADDRESSES: MERPAC will meet on both days in the Atherton Halau of the Bishop Museum, 1525 Bernice St., Honolulu, HI 96817. Further directions regarding the location of the Bishop Museum may be obtained by contacting (808) 323–3318. Send written material and requests to make oral presentations to Mr. Mark Gould, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Mr. Mark C. Gould, Assistant to the Executive Director, telephone (202) 267–6890, fax (202) 267–4570, or e-mail *mgould@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770, as amended).

Agenda of Meeting on September 20, 2004

The full committee will meet to discuss the objectives for the meeting. The committee will then break up into the following working groups as necessary: Task statement 30, concerning utilizing military sea service for STCW certifications; Task statement 36, concerning recommendations on a training program for officers in charge of an engineering watch coming up through the hawsepipe; Task statement 40, concerning methods to determine the date at which a mariner established competency in Basic Safety Training in light of National Maritime Policy Letter 12–01; Task statement 43, concerning recommendations on a training and assessment program for able-bodied seamen on sea-going vessels in preparation for discussions of this issue at the Subcommittee on Standards of Training and Watchkeeping at the International Maritime Organization; and Task statement 46, review of the draft Navigation and Vessel Inspection Circular concerning the medical standards applicable to merchant mariners. These task statements may be viewed at the MERPAC website at *http://www.uscg.mil/hq/g-m/advisory/merpac/merpac.htm.*

New working groups may be formed to address issues proposed by the Coast Guard, MERPAC members, or the public. At the end of the day, the working groups will make a report to the full committee on what has been accomplished in their meetings. No action will be taken on these reports on this date.

Agenda of Meeting on September 21, 2004

The agenda comprises the following:

(1) Introduction.

(2) Working Groups' Reports

(a) Task Statement 30, concerning Utilizing military sea service for STCW certifications.

(b) Task Statement 36, concerning Recommendations on a training program for officers in charge of an engineering watch coming up through the hawsepipe.

(c) Task statement 40, concerning Qualifications in Basic Safety Training.

(d) Task Statement 43, concerning Recommendations on a training and assessment program for able-bodied seamen on sea-going vessels.

(e) Task Statement 46, concerning Review of the draft Navigation and Vessel Inspection Circular concerning the medical standards applicable to merchant mariners.

(f) Other task statements which may have been adopted for discussion and action.

(3) Other items to be discussed:

(a) Standing Committee—Prevention Through People.

(b) Briefings concerning on-going projects of interest to MERPAC.

(c) Other items brought up for discussion by the committee or the public.

Procedural

Both meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify Mr. Mark Gould no later than September 6, 2004. Written material for distribution at a meeting should reach the Coast Guard no later than September 6, 2004. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 25 copies to Mr. Gould no later than September 6, 2004.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Mr. Gould as soon as possible.

Dated: August 9, 2004.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 04–19159 Filed 8–19–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–34]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: August 20, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Barruss, Department of Housing

and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 12, 2004.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 04–18865 Filed 8–19–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–17]

Credit Watch Termination Initiative

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by the HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Origination Approval Agreement (Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the 19th review period, HUD is only terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 200 percent of the field office rate.

Effect: Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the termination became effective may be submitted for insurance endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW, Suite 3214, Washington, DC 20024.

Action: The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
Alliance Mortgage Banking Corp	1025 Old Country Road, Westbury, NY 11590.	New York, NY	5/24/2004	Philadelphia.
Alliance Mortgage Banking Corp	366 North Broadway, Jericho, NY 11753.	New York, NY	5/22/2004	Philadelphia.
American Lending Group Inc	4260 Shoreline Dr., Ste. 185 Earth City, MO 63045.	St. Louis, MO	6/29/2004	Denver.
American Union Mortgage Inc	5250 S. Commerce Dr., Ste. 101, Murray, UT 84107.	Salt Lake City, UT	6/29/2004	Denver.
America's Mortgage Resource Inc	3317 N. I–10 Service Road, Metairie, LA 70003.	New Orleans, LA	6/29/2004	Denver.
Amerifirst Financial Corp	616 W. Centre Ave., Portage, MI 49024	Detroit, MI	6/29/2004	Philadelphia.
Amerifirst Financial Corp	616 W. Centre Ave., Portage, MI 49024	Flint, MI	6/29/2004	Philadelphia.
Approved Finanical Inc	9400 W. Foster Ave., Ste. 211 Chicago, IL 60656.	Chicago, IL	6/29/2004	Atlanta.
Arcadia Mortgage Inc	802 East Winchester #100, Murray, UT 84107.	Salt Lake City, UT	6/29/2004	Denver.
CCSF Inc	1050 E. Flamingo Rd., Ste. 237–N, Las Vegas, NV 89119.	Las Vegas, NV	6/29/2004	Denver.
Choice One Mortgage Inc	11024N. 28th Drive, Ste. 240, Phoenix, AZ 85029.	Phoenix, AZ	6/29/2004	Santa Ana.
Columbia National Inc	1111 West 22nd St., Ste. 225, Oak Brook, IL 60523.	Chicago, IL	6/29/2004	Atlanta.
Community Mortgage Inc	7290 Cherokee Plaza, Oklahoma City, OK 73132.	Oklahoma, OK	6/29/2004	Denver.
Crossmann Mortgage Inc	9202 N. Meridian St., Ste. 120, Indianapolis, IN 46260.	Indianapolis, IN	7/1/2004	Atlanta.
First Service Mortgage Inc	3581 Main St., College Park, GA 30337	Atlanta, GA	6/29/2004	Atlanta.
Gateway Funding Diversified Mtg	300 Welsh Rd., Bldg. 5, Horsham, PA 19044.	Philadelphia, PA	6/29/2004	Philadelphia.
Global Financial Services	172 West St., Annapolis, MD 21401	Baltimore, MD	5/22/2004	Philadelphia.
Loanamerica Home Mtg. Inc	9494 Southwest Freeway, Ste. 450, Houston, TX 77074.	Houston, TX	6/29/2004	Denver.
Perimeter Mortgage Funding	1770 Indian Trail Rd., Ste. 400, Norcross, GA 30093.	Birmingham, AL	6/29/2004	Atlanta.
Premier Mortgage Services	1930 East Fort Union Blvd., Salt Lake City, UT 84121.	Salt Lake City, UT	6/29/2004	Denver.
Professional Lending LCC	3523 Walton Way Ext., Augusta, GA 30909.	Atlanta, GA	6/29/2004	Atlanta.
Southwest Funding, L.P. previously known as Texas Residential Mortgage LP.	8848 Greenville Ave., Dallas, TX 75243	Dallas, TX	6/29/2004	Denver.
Total Mortgage Corp	32900 Five Mile, Ste. 100 Livonia, MI 48154.	Detroit, MI	6/29/2004	Philadelphia.
US Mortgage Corp	19 D Chapin Road, Pine Brook, NJ 07058.	Newark, NJ	6/29/2004	Philadelphia.
World Wide Financial Services	26500 Northwestern Hwy., Fl. 4, Southfield, MI 48076.	Detroit, MI	6/29/2004	Philadelphia.

Dated: August 12, 2004.

Sean Cassidy,

General Deputy, Assistant Secretary for Housing.

[FR Doc. 04–19057 Filed 8–19–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Injurious Wildlife; Importation Certification for Live Fish and Fish Eggs (50 CFR 16.13)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service has submitted the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A description of the information collection requirement is included in this notice. If you wish to obtain copies of the information collection requirement, related forms, or explanatory material, contact the Service Information Collection Officer at the address listed below.

DATES: OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must submit comments on or before September 20, 2004.

ADDRESSES: Submit your comments on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA via facsimile or electronic mail: (202) 395–6566 (fax); or *OIRA_DOCKET@omb.eop.gov* (electronic mail). Please provide a copy of your comments to the Fish and Wildlife Service's Information Collection Clearance Officer via postal mail, electronic mail, or facsimile: 4401 N. Fairfax Dr., MS 222 ARLSQ, Arlington, VA 22203; *Hope_Grey@fws.gov* (electronic mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, or related forms, contact Hope Grey by phone at (703) 358–2482 or by e-mail at *Hope_Grey@fws.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested parties and affected agencies have an opportunity to comment on information collection and record keeping activities (see CFR 1320.8(d)). The U.S. Fish and Wildlife Service (we, or the Service) has submitted a request to OMB for approval of a collection of information included in FWS Form 3–2273, Title 50 Certifying Official form; FWS Form 3–2274, U.S. Title 50 Certification form; and FWS Form 3–2275, Title 50 Importation Request form. All three of these forms were granted emergency approval under OMB control number 1018–0078, which expires on August 31, 2004. We are requesting a 3-year term of approval for these collection activities.

Federal agencies 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 Lacey Act (18 U.S.C. 42) (''Act'') prohibits the possession or importation of any animal or plant deemed to be and prescribed by regulation to be injurious, to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States. The Department of the Interior is charged with enforcement of this Act.

The Act and our regulations at 50 CFR 16 allow for the importation of animals classified as injurious if specific criteria are met. Specifically, this information collection allows the Service to approve the importation of live salmonids and their reproductive products into the United States.

On March 17, 2004, we published in the **Federal Register** (69 FR 12708) a notice announcing that we planned to submit this information collection to OMB for approval under the Paperwork Reduction Act. We solicited public comments on that notice for 60 days, ending May 17, 2004. By that date, we received one comment. The commenter expressed concern that the information collection does not specifically define ''fish'' as ''wild fish'' or ''fisheries resources,'' which are the responsibility of the U.S. Fish and Wildlife Service. The commenter went on to explain the responsibility of health protection of all forms of animal agriculture, including aquaculture, in the United States rests with the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

As explained above, the authorizing legislation for this information collection is the Lacey Act, which deals with injurious animals, and this collection specifically allows the Service to approve the importation of live salmonids and their reproductive products into the United States regardless of their source, destination, or use. As such, we do not believe that, at this time, we need to further define the term ''fish'' on these forms.

The importation of salmonids requires that we collect information from those individuals wishing to import salmonids or their reproductive products with regard to the numbers, life stages, and species to be imported, as well as their source and destination. In addition, we require a health certificate submitted by a certified Title 50 inspector to ensure the animals being imported do not pose a health risk to the nation's commercial and natural aquatic resources. Regarding the qualifications of the Title 50 inspectors, we collect information that verifies the applicants' professional qualifications and the adequacy of facilities available to those individuals to complete the inspections according to methods provided in 50 CFR 16.

We have regulated the importation of live salmonids and their reproductive products for over 25 years. In order to effectively carry out these responsibilities and protect the aquatic resources of the United States, it is essential that we gather information on the animals being imported with regard to their source, destination, and health status. It is also imperative that we ensure the qualifications of those individuals providing the relevant fish health data upon which we base our decision to allow importation. This collection allows us to gather the information necessary to make sound decisions on allowing importation of live salmonids and their reproductive products into the United States. The forms are described below.

Form Title: Title 50 Certifying Official Form.

OMB Control Number: 1018–0078.

Form Number: FW 3–2273.

Frequency of Collection: Every 5 years as needed.

Description of Respondents: Aquatic animal health professionals seeking to be certified Title 50 inspectors.

Total Annual Responses: 16 (estimate based on previous collection activities). There are currently approximately 80 inspectors.

Total Annual Burden Hours: 16 hours. We estimate the reporting burden at 1 hour for each of the total 16 responses, or approximately 16 hours total.

Form Title: U.S. Title 50 Certification Form.

OMB Control Number: 1018–0078.

Form Number: FW 3–2274.

Frequency of Collection: On occasion, as needed by the submitting individual or entity.

Description of Respondents: Certified Title 50 inspectors that have performed health certifications on live salmonids

or their reproductive products for importation into the United States.

Total Annual Responses: Approximately 50 (estimate based on previous collection activities).

Total Annual Burden Hours: 25 hours. We estimate the reporting burden at thirty minutes for each of the total 50 responses, or approximately 25 hours total.

Form Title: Title 50 Importation Request Form.

OMB Control Number: 1018–0078.

Form Number: FW 3–2275.

Frequency of Collection: On occasion, as needed by the submitting individual or entity.

Description of Respondents: Any entity wishing to import live salmonids or their reproductive products into the United States.

Total Annual Responses: 50 (estimate based on previous collection activities).

Total Annual Burden Hours: 12.5 hours. We estimate the reporting burden at 0.25 hours for each of the total 50 responses, or approximately 12.5 hours total.

We again invite comments on this proposed information collection on the following: (1) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents.

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

Dated: July 7, 2004.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 04–19114 Filed 8–19–04; 8:45 am]

BILLING CODE 4310–55–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 September 20, 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: Cincinnati Zoo and Botanical Garden, Cincinnati, OH, PRT–089828.

The applicant requests a permit to import two captive-born male cheetahs (*Acinonyx jubatus*) from the De Wildt Cheetah and Wildlife Center, De Wildt, South Africa, for the purpose of enhancement of the species through conservation education.

Applicant: Tulane University National Primate Research Center, Covington, LA, PRT–089123.

The applicant requests a permit to import tissue samples from red-eared nose-spotted monkey (*Cercopithecus erythrotis*), black colobus monkey (*Colobus satanas*), and drill (*Mandrillus leucophaeus*) collected from wild specimens in Equatorial Guinea, for scientific research.

Applicant: Nashville Zoo at Grassmere, Nashville, TN, PRT–090181.

The applicant requests a permit to import one male and one female captive born clouded leopard (*Neofelis nebulosa*) from the Khao Kheow Open Zoo, Chonburi, Thailand, for the purpose of enhancement of the species through captive propagation.

Applicant: Wildlife Conservation Society, Bronx, NY, PRT–090035.

The applicant requests a permit to import six male and four female captive born African wild dogs (*Lycaon pictus*) from the De Wildt Cheetah Centre, De Wildt, South Africa, for the purpose of enhancement of the species through captive propagation and conservation education.

Applicant: University of Massachusetts, Psychology Department, Amherst, MA, PRT–087188.

The applicant requests a permit to import biological samples from wild and captive born Sumatran orangutan (*Pongo pygmaeus abelii*), Bornean orangutan (*Pongo pygmaeus pygmaeus*), and orangutan (*Pongo pygmaeus*) from Singapore Zoological Gardens, Singapore for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Scott L. Pike, Colchester, VT, PRT–090399.

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: Clarence T. Clem, Carrollton, TX, PRT–090925.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

Applicant: James G. Stout, Alliance, OH, PRT–090337.

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: William R. Powers, Lyons, IN, PRT–091173.

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: August 6, 2004.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–19120 Filed 8–19–04; 8:45 am]

BILLING CODE 4310–55–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 September 20, 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 (**ADDRESSES** above).

Applicant: Gibbon Conservation Center, Saugus, CA, PRT–088784

The applicant requests a permit to import one male and two female live captive-born siamangs (*Hylobates syndactylus*, syn. *Symphalangus syndactylus*) from the Howletts Wild Animal Park, Kent, England, for the purpose of enhancement of the survival of the species in the wild.

Applicant: Douglas E. Owens, Oak Grove, LA, PRT–090528

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: Alvin E. Adams, Leary, GA, PRT–090752

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: Thomas R. Miller, Lincoln, NE, PRT–090753

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: Allan S. Gleaton, Albany GA, PRT–090784

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: Marilyn K. Baxter, Farmers Branch, TX, PRT–090956

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: Clyde Bros Johnson Circus Corp., Seagoville, TX, PRT–085458

The applicant requests a permit to export, re-export and re-import one captive born female tiger (*Panthera tigris*) named ''Duby'' to worldwide locations for the purpose of enhancement of the species through conservation education. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

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 (**ADDRESSES** 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: Mark D. Spillane, Boca Raton, FL, PRT–086645

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: Antonio Iaquinta, Melville, NY, PRT–090017

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort sea polar bear population in Canada for personal use.

Dated: July 30, 2004.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–19170 Filed 8–19–04; 8:45 am]

BILLING CODE 4310–55–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 September 20, 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: Yerkes National Primate Research Center, Atlanta, GA, PRT–837068.

The applicant requests renewal and amendment of a permit to take captive held white-collared mangabeys (*Cercocebus torquatus*) through limited invasive sampling including anesthetizing, collecting blood, skin, and bone marrow tissue samples, and MRI scanning, usually, but not always, during routine veterinary examinations for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Gibbon Conservation Center, Saugus, CA, PRT–089009.

The applicant requests a permit to import one live female captive-born silvery gibbon (*Hylobates moloch*) from the Howletts Wild Animal Park, Kent, England, for the purpose of enhancement of the species through captive propagation and conservation education.

Applicant: Sierra Endangered Cat Haven, Dunlap, CA, PRT–087545.

The applicant requests a permit to import two live female captive-born jaguars (*Panthera onca*) from the La Aurora Zoo, Guatemala, for the purpose of enhancement of the species through conservation education and captive propagation.

Applicant: Thomas A. McCoy, Riverside, CA, PRT–090236.

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: Tav D. Blankenship, Rockwall, TX, PRT–089778.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

Applicant: Arthur R. Schisler, Northampton, PA, PRT–090230.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal use.

Dated: July 23, 2004.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–19171 Filed 8–19–04; 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 endangered species and/or 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 Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) The application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

Endangered Species

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
087923	Louis T. Titus	69 FR 33931; June 17, 2004	July 27, 2004.
087946	Kurt D. Divan	69 FR 33931; June 17, 2004	July 22, 2004.
088013	Shane Clay Westcott	69 FR 33931; June 17, 2004	July 27, 2004.
088292	Ray M. Hagio	69 FR 36096; June 28, 2004	July 27, 2004.
088297	Gerry A. Scheidhauer	69 FR 36095; June 28, 2004	July 27, 2004.

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
088299	Gregg K. Hobbs	69 FR 36096; June 28, 2004	July 27, 2004.
088780	Thomas J. Merkley	69 FR 36095; June 28, 2004	July 27, 2004.

Marine Mammals

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
085164	William B. Scott, Sr.	69 FR 21858; April 22, 2004	July 20, 2004.
086824	Leon A. Naccarato	69 FR 27948; May 17, 2004	July 26, 2004.
086954	Robert J. Merkle	69 FR 31834; June 7, 2004	July 21, 2004.
086969	Kelly R. McBride	69 FR 30714; May 28, 2004	July 26, 2004.
087507	Kevin M. Libby	69 FR 31834; June 7, 2004	July 26, 2004.
087541	Calvin A. Speckman	69 FR 33931; June 17, 2004	July 26, 2004.
087563	Richard R. Childress	69 FR 31834; June 7, 2004	July 19, 2004.
087684	Walter O. Kirby	69 FR 31834; June 7, 2004	July 26, 2004.
088193	Roger A. Martin	69 FR 33651; June 16, 2004	July 26, 2004.
088271	Glenn E. Peterson	69 FR 33651; June 16, 2004	July 26, 2004.

Dated: July 30, 2004.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–19172 Filed 8–19–04; 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 September 20, 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) 248–6920.

SUPPLEMENTARY INFORMATION:

Permit No. TE–837751

Applicant: Bureau of Reclamation, Phoenix, Arizona.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for the Yuma clapper rail (*Rallus longirostris yumanensis*) within Arizona.

Permit No. TE–829996

Applicant: Houston Zoo, Houston, Texas.

Applicant requests an amendment to an existing permit to allow educational display and captive propagation of the following species, at appropriate Houston Zoo facilities: Big Bend gambusia (*Gambusia gaigei*), Comanche Springs pupfish (*Cyprinodon elegans*), and Leon Springs pupfish (*Cyprinodon bovines*).

Permit No. TE–813088

Applicant: Bureau of Reclamation, Albuquerque, New Mexico.

Applicant requests an amendment to an existing permit to allow presence/absence surveys and nest monitoring for the interior least tern (*Sterna antillarum*) within New Mexico.

Permit No. TE–022190

Applicant: Arizona-Sonora Desert Museum, Tucson, Arizona.

Applicant requests an amendment to an existing permit to allow educational display and captive propagation of the Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*) at appropriate Arizona-Sonora Desert Museum facilities.

Permit No. TE–091673

Applicant: Madeline Terry, Denver, Colorado.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona, Colorado, New Mexico, and Utah.

Permit No. TE–091552

Applicant: Zane Homesley, Kyle, Texas.

Application requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species within Texas: black-capped vireo (Vireo atricapillus), golden-cheeked warbler (Dendroica chrysoparia), southwestern willow flycatcher (Empidonax traillii extimus), and Houston toad (Bufo houstonensis).

Permit No. TE–091844

Applicant: Jeff Howard, Braggs, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the American burying beetle (*Nicrophorus americanus*) within Oklahoma.

Authority: 16 U.S.C. 1531, *et seq.*

Dated: August 11, 2004.

Stuart Leon,

Acting Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 04–19109 Filed 8–19–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for Steigerwald Lake National Wildlife Refuge (NWR), Franz Lake NWR, and Pierce NWR for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that a Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA) for Steigerwald Lake National Wildlife Refuge, Franz Lake National Wildlife Refuge, and Pierce National Wildlife Refuge, hereafter collectively called the Gorge Refuges, is available for review and comment. The Gorge Refuges are located on the Washington side of the Columbia River Gorge area. This Draft CCP/EA, prepared pursuant to the National Wildlife Refuge System Administration Act, as amended, and the National Environmental Policy Act of 1969 (NEPA), describes the Service's proposal for management of the Gorge Refuges over the next 15 years.

Also available for review with the Draft CCP/EA are draft compatibility determinations for several Refuge uses and a draft Fire Management Plan.

DATES: Written comments must be received at the address below by September 20, 2004.

ADDRESSES: Comments on the Draft CCP/EA should be addressed to: Project Leader, Ridgefield National Wildlife Refuge Complex, P.O. Box 457, Ridgefield, Washington 98642.

FOR MORE INFORMATION CONTACT: Project Leader, Ridgefield National Wildlife Refuge Complex, P.O. Box 457, Ridgefield, Washington, 98642, phone (360) 887–4106.

SUPPLEMENTARY INFORMATION: Copies of the Draft CCP/EA may be obtained by writing to U.S. Fish and Wildlife Service, Attn: Glenn Frederick, Pacific Northwest Planning Team, 16507 Roy Rogers Road, Sherwood, Oregon, 97140.

Copies of the Draft CCP/EA may be viewed at this address or at Ridgefield National Wildlife Refuge Complex, 301 North Third Avenue, Ridgefield, Washington.

Printed documents will also be available for review at the following libraries: Washougal Community Library, 1661 C Street, Washougal, WA 98671; Stevenson Community Library, 120 NW., Vancouver Ave., Stevenson, WA 98648; and Fort Vancouver Regional Library, 1007 East Mill Plain Blvd., Vancouver, WA 98663.

Background

The Gorge Refuges are located in Skamania and Clark Counties, Washington, in the Columbia River Gorge downstream of Bonneville Dam. The administrative center for the Gorge Refuges is the Ridgefield National Wildlife Refuge Complex, located in Ridgefield, Washington, approximately 25 miles northwest of Steigerwald Lake Refuge. Planning for the three Gorge Refuges occurred simultaneously for the purposes of this CCP because: The Refuges are located close to one another in the Columbia River floodplain; many of the same issues and management opportunities occur at all three Refuges, and they are part of the same lower Columbia River ecosystem.

The Gorge Refuges are part of the National Wildlife Refuge System administered by the Service. Wildlife conservation is the priority of National Wildlife Refuge System lands. The Gorge Refuges contribute to the conservation of fish, wildlife, plants, and native habitats of the lower Columbia River. Franz Lake Refuge contains the largest, most intact freshwater marsh remaining downstream of the Bonneville Dam. Steigerwald Lake Refuge provides habitat for migratory birds and other wildlife as mitigation for impacts resulting from the construction and generation of Federally funded and operated hydroelectric projects on the Columbia River and its tributaries. All three of the Refuges provide important spawning and rearing habitat for anadromous fish, including several species that are listed under or are candidates for listing under the Endangered Species Act.

Proposed Action

The Proposed Action is to adopt and implement a Comprehensive Conservation Plan that will provide the Refuge Manager with a 15-year management plan for the conservation of fish, wildlife, and plant resources and their related habitats, while providing opportunities for compatible wildlife-dependent recreational uses. While the Gorge Refuges are not currently open to the public, they have the potential to provide high-quality, compatible public uses in support of Refuge purposes and goals.

Alternatives

The Draft CCP/EA identifies and evaluates three alternatives for managing the Gorge Refuges over the next 15 years. Each alternative describes a combination of habitat and public use management prescriptions designed to achieve the Refuge purposes, goals, and vision. The Service prefers Alternative B because it best achieves Refuge purposes, vision, and goals; contributes to the Refuge System mission; addresses the substantive issues and relevant mandates; and is consistent with principles of sound fish and wildlife management. The alternatives are briefly described below, followed by a description of actions common to all of the alternatives.

Under Alternative A, the no action alternative, the Service would continue to protect, maintain, and, where feasible, restore habitat for priority species, including Canada geese, waterfowl, and Federal and State listed species. However, at current levels of funding and staff, these efforts would be inadequate to fulfill Refuge purposes and achieve Refuge goals. Under this alternative, as in Alternatives B and C, subject to the availability of appropriated funds, within the next 15 years the Gateway Center and interpretive trail at Steigerwald Lake Refuge, approved by the Service in 1999 but currently unfunded, would be constructed and opened to the public. In addition, the Service would implement its earlier decision to prohibit horseback riding, dog-walking, jogging and bicycling on the 0.6-mile section of the Columbia Dike Trail at Stiegerwald Lake Refuge. Opportunities for the public to attend special events and staff-led tours of the Refuges would continue. Pierce Refuge would continue to be available to local school groups for environmental education.

Alternative B, the preferred alternative, would focus refuge management on restoring and maintaining biological diversity with particular emphasis on the conservation targets identified in the CCP. Inventory, monitoring, and research would increase. Working with partners, the Service would seek to remove blockages to fish passage within the Gibbons Creek, Indian Mary Creek and Hardy Creek watersheds. The Service would participate in ongoing efforts to cleanup Gibbons Creek and to eliminate the threat of contaminated groundwater and stormwater runoff from entering Steigerwald Lake Refuge. Substantially

more acres would be targeted for restoration under this Alternative than under Alternative A. Opportunities for wildlife viewing and photography and environmental education and interpretation would be increased. In addition to the current wildlife-dependent public uses of the Columbia Dike Trail, the Service would officially open the portion of the trail on Steigerwald Lake Refuge to horseback riding, jogging, bicycling, and leashed pets. The Refuge would increase the number of staff-led tours of the Refuges. We would partner with the city of North Bonneville to promote wildlife viewing from an existing public trail adjacent to Pierce Refuge. Environmental education would be enhanced through coordination with local school teachers and classroom visits.

Alternative C has many features in common with Alternative B. The primary difference is that under Alternative C, the Service would seek to restore more of the historic (pre-Bonneville Dam) vegetation cover. At Pierce Refuge, artificially created wetlands and open water habitat would be reduced and pastures eliminated. The amount of pasture at Steigerwald Lake Refuge would be reduced to the minimum needed to support wintering Canada geese. The maximum amount of oak restoration would occur under Alternative C. Partnerships would be developed to monitor water quality, remove or modify fish barriers, and control or eliminate noxious weed populations. A Research Natural Area would be established at Franz Lake Refuge. Public uses would be similar to those proposed in Alternative B, with the exceptions of the classroom visits, teacher workshops, and the wildlife viewing trail adjacent to Pierce Refuge. These public uses would not be developed under Alternative C.

Actions Common to All Alternatives

The following components are proposed to be continued or implemented under all three alternatives.

Steigerwald Lake NWR Gateway Center and Interpretive Trail. Subject to availability of appropriated funding, the Service would construct a Gateway Center and interpretive trail at Steigerwald Lake NWR, as described in the Service's EA and Finding of No Significant Impact signed in 1999. These facilities would serve an estimated 125,000 visitors annually.

Steigerwald Lake Feasibility Study. Acting under authority of Section 1135 of the Water Resources Act of 1986, the U.S. Army Corps of Engineers will direct the feasibility study phase of a project to reestablish hydrologic connections between the historic Steigerwald Lake, Columbia River, and Gibbons Creek.

Western Pond Turtle Program. The Washington Department of Fish and Wildlife will continue to release and monitor Western pond turtles on Pierce Refuge, and will also investigate the feasibility of introducing turtles to Steigerwald Lake Refuge.

Mosquito Management. The Service will consult and coordinate with local mosquito control districts to implement mosquito management on the Gorge Refuges. The objective will be to conduct a biologically sound program that maintains the ecological integrity of the Refuges while addressing legitimate human and fish and wildlife health concerns and complying with Service regulations and policy. The Skamania County Mosquito Control District will be allowed to monitor and treat mosquitoes at Franz Lake Refuge pursuant to the phased approach stipulated in the approved Compatibility Determination.

Public Comments

Public comments are requested, considered, and incorporated throughout the planning process in numerous ways. Public outreach has included public meetings with affected agencies and groups, planning update mailings, and **Federal Register** notices. After the review and comment period ends for this Draft CCP/EA, comments will be analyzed by the Service and addressed in revised planning documents.

All comments received from individuals, including names and addresses, become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations 40 CFR 1506.6(f), and other Service and Departmental policies and procedures.

Dated: August 10, 2004.

William F. Shake,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 04–19112 Filed 8–19–04; 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
085780	Tom J. Nieuwenhuis	69 FR 27947; May 17, 2004	July 29, 2004.
086456	Steven W. Stock	69 FR 27948; May 17, 2004	July 29, 2004.
086723	Robert D. Yajko	69 FR 30715; May 28, 2004	July 29, 2004.
087099	Terry N. Steinheiser	69 FR 30714; May 28, 2004	August 3, 2004.
087596	Lonnie R. Henriksen	69 FR 31834; June 7, 2004	July 29, 2004.
087917	Michael R. Traub	69 FR 33931; June 17, 2004	August 4, 2004.
087960	Richard G. Duggan	69 FR 33931; June 17, 2004	July 30, 2004.
088995	Bruce M. Golberg	69 FR 36095; June 28, 2004	July 30, 2004.

Dated: August 6, 2004.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–19119 Filed 8–19–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW150318]

Notice of Competitive Coal Lease Sale, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Competitive Coal Lease Sale.

SUMMARY: Notice is hereby given that certain coal resources in the Little Thunder Tract described below in Campbell County, WY, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 10 a.m., on Wednesday, September 22, 2004. Sealed bids must be submitted on or before 4 p.m., on Tuesday, September 21, 2004.

ADDRESSES: The lease sale will be held in the First Floor Conference Room (Room 107), of the Bureau of Land Management (BLM) Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003. Sealed bids must be submitted to the Cashier, BLM Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Julie Weaver, Land Law Examiner, or Robert Janssen, Coal Coordinator, at (307) 775–6260, and (307) 775–6206, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by Ark Land Company. The Federal coal tract being considered for sale is adjacent to the Black Thunder Mine operated by Thunder Basin Coal Company. Ark Land Company and Thunder Basin Coal Company are both subsidiaries of Arch Coal, Inc., of St. Louis, Missouri. The coal resources to be offered consist of all reserves recoverable by surface mining methods in the following-described lands located in southeast of Wright, Wyoming, in southeastern Campbell County approximately 6 miles east of State Highway 59, crossed by State Highway 450, and adjacent to the BNSF/UP joint rail line.

T. 43 N., R. 71 W., 6th PM, Wyoming

Sec. 1: Lot 16 (S½).
Sec. 2: Lots 5–20.
Sec. 11: Lots 1–16.
Sec. 12: Lots 2 (W½,SE¼), 3–16.
Sec. 13: Lots 1–16.
Sec. 14: Lots 1–15, NW¼NW¼.
Sec. 24: Lots 1–16.
Sec. 25: Lots 1–16.

T. 44 N., R. 71 W., 6th P.M, Wyoming

Sec. 35: Lots 1–16.

Containing: 5,083.50 acres, more or less.

The tract is adjacent to Federal coal leases to the east held by the Black Thunder Mine, to State of Wyoming coal leases to the east and south held by Black Thunder Mine and to a Federal coal lease by a common section corner held by the Jacobs Ranch Mine to the northeast. It is also adjacent to additional unleased Federal coal to the north, west, and southwest.

All of the acreage offered has been determined to be suitable for mining except lands within 100 feet of the joint rail line right-of-way. Other features such as the county road and pipelines can be moved to permit coal recovery. In addition, temporary loadout facilities can be used at the end of the mine life to recover coal under the rail spur which also crosses the LBA tract. Finally, numerous oil and/or gas wells have been drilled on the tract. The estimate of the bonus value of the coal lease will include consideration of the future production from these wells. An economic analysis of this future income stream will determine whether a well is bought out and plugged prior to mining or re-established after mining is completed. Small portions of the surface estate of the tract are owned by B.N. railroad and a private trust, but most of the surface estate is controlled by the Black Thunder Mine and United States.

The tract contains surface mineable coal reserves in the Wyodak seam currently being recovered in the adjacent, existing mines. On the LBA tract, the Wyodak seam is generally a thick seam with one upper split, one lower split, and two thin deeper splits. These splits are not continuous over the LBA tract but are often merged into the main seam. The main seam ranges from 63–77 feet thick while the splits range from 0–15 feet thick for the upper one, from 0–15 feet thick for the lower one, and from 0–5 feet thick for each of the lower two. The overburden depths range from about 195–400 feet thick on the LBA. The interburden ranges from 0–125 feet thick between the upper split and the main seam, from 0–12 fee thick between the lower split and the main seam, and from 0–6 feet thick between the individual lower splits.

The tract contains an estimated 718,719,000 tons of mineable coal. This estimate of mineable reserves includes the main seam and splits mentioned above but does not include any tonnage from localized seams or splits containing less than 5 feet of coal. It does not include the State of Wyoming coal although these reserves are expected to be recovered by the Black Thunder Mine. The total mineable stripping ratio (BCY/Ton) of the coal is about 3.4:1. Potential bidders for the LBA should consider the recovery rate expected from thick seam and multiple seam mining. The Little Thunder LBA coal is ranked as subbituminous C. The overall average quality on an as-received basis is 8884 BTU/lb with about 0.24% sulfur and 1.2% sodium in the ash. These quality averages place the coal reserves near the high end of the range of coal quality currently being mined in the Wyoming portion of the Powder River Basin.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds the BLM's estimate of the estimated fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m., on Tuesday, September 21, 2004, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale. The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre, or fraction thereof, and of a royalty payment to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the BLM Wyoming State Office at the addresses above. Case file documents, WYW150318, are available for inspection at the BLM Wyoming State Office.

Alan Rabinoff,

Deputy State Director, Minerals and Lands.

[FR Doc. 04–19153 Filed 8–19–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Public Comment Deadline Extension

AGENCY: Bureau of Land Management, Interior; Forest Service, Agriculture.

ACTION: Notice of public comment deadline extension.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Federal Land Policy Management Act of 1976 and regulatory requirements, the San Juan Public Lands Center will extend the current 90-day public comment period on the Northern San Juan Basin Coal Bed Methane Environmental Impact Statement being prepared by the Bureau of Land Management and the U.S. Forest Service.

DATES: The original deadline for public comment was September 13, 2004. The new deadline for public comments will be November 30, 2004.

SUPPLEMENTARY INFORMATION: A draft environmental impact statement has been prepared to assess a proposal by six energy companies to develop 296 new coalbed methane wells in the Northern San Juan Basin of southwestern Colorado. Copies of the Draft EIS are available at the San Juan Public Lands Center, 15 Burnett Court, Durango, 970 247–4874, and Columbine Public Lands Office, 367 Pearl Street, Bayfield, 970 884–2512. The document is also available for review at these offices and at public libraries in Durango, Bayfield and Farmington. Hard copies are available upon request, but are very costly to produce. The Draft EIS may also be viewed on the Web: *www.fs.fed.us/r2/sanjuan* or *www.nsjb-eis.org.*

Written public comments will be accepted until September 13, 2004, and can also be mailed to Northern San Juan Basin CBM EIS, USDA FS Content Analysis Team, P.O. Box 221150, Salt Lake City, UT 84122. Comments may also be e-mailed to: *nbasin-cbm-eis@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Ann Bond, San Juan Public Lands Center, 15 Burnett Ct., Durango, CO 81301. Phone (970) 385–1219.

Dated: August 13, 2004.

Mark W. Stiles,

San Juan Public Lands Center Manager.

[FR Doc. 04–19059 Filed 8–19–04; 8:45 am]

BILLING CODE 4910–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Pinedale Anticline Working Group and Task Groups

AGENCY: Bureau of Land Management (BLM), Wyoming State Office, Interior.

ACTION: Pinedale Anticline Working Group and Task Groups—Notice of Charter Renewal.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Public Law 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior has renewed the Pinedale Anticline Working Group and Task Groups. The purpose of the Committee and Subcommittees is to advise the Bureau of Land Management, Pinedale Field Office Manager, regarding recommendations on matters pertinent to the Bureau of Land Management's responsibilities related to the Pinedale Anticline Environmental Impact Statement and Record of Decision.

Members of the Working Group and Task Groups will be comprised of a representative from the State of Wyoming's Office of the Governor, a representative from the Town of Pinedale, a representative from the oil/gas operators, a representative from the Sublette County Government, a representative from environmental groups, a representative from the affected landowners, a representative of the local livestock operators, and two members from the public-at-large.

FOR FURTHER INFORMATION CONTACT: Ms. Priscilla E. Mecham, Pinedale Field Office Manager, Bureau of Land Management, 432 East Mill Street, Pinedale, Wyoming 82941, Phone: (307) 367–5300.

Certification

I hereby certify that the renewal of the Pinedale Anticline Working Group and Task Groups is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Dated: August 13, 2004.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 04–19070 Filed 8–19–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–010–04–1430–ES; AZA–31954]

Notice of Realty Action; Recreation and Public Purposes Classification; Arizona; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Land Management published a notice for Recreation and Public Purposes Classification in the **Federal Register** of March 8, 2004. The document contained an incorrect legal description.

Correction

In the **Federal Register** of March 8, 2004, FR Vol. 69, No. 45, on page 10741, in the first column, correct the legal description to read:

T. 41 N., R. 2 W., Sec. 22,
W½NW¼NE¼NE¼;
NW¼SW¼NE¼NE¼; N½NW¼NE¼;
N½NE¼NW¼; N½S½NW¼NE¼,
N½S½NE¼NW¼.

FOR FURTHER INFORMATION CONTACT: Linda Barwick, (435) 688–3287.

Dated: August 10, 2004.

Roger G. Taylor,

Arizona Strip Field Manager.

[FR Doc. 04–19061 Filed 8–19–04; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park, Bar Harbor, ME; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, September 13, 2004.

The Commission was established pursuant to Public Law 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at park Headquarters, McFarland Hill, Bar Harbor, Maine, at 1 p.m., to consider the following agenda:

1. Review and approval of minutes from the meeting held June 7, 2004
2. Committee reports:

—Land Conservation
—Park Use
—Science
—Historic

3. Old business
4. Superintendent's report
5. Public comments
6. Proposed agenda for next Commission meeting, February 2, 2005.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: July 13, 2004.

Len Bobinchock,

Acting Superintendent, Acadia National Park.

[FR Doc. 04–19084 Filed 8–19–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Great Sand Dunes National Park Advisory Council Meeting

AGENCY: National Park Service, DOI.

ACTION: Announcement of meeting.

SUMMARY: Great Sand Dunes National Monument and Preserve announces a meeting of the Great Sand Dunes National Park Advisory Council, which was established to provide guidance to the Secretary on long-term planning for Great Sand Dunes National Monument and Preserve.

DATES: The meeting date is:

1. September 9, 2004, 1 p.m.–8 p.m., Crestone, Colorado.

ADDRESSES: The meeting location is:

1. Crestone, Colorado—Colorado College Conference Center at the Baca, Crestone, CO 81131.

FOR FURTHER INFORMATION CONTACT: Steve Chaney, 719–378–6312.

SUPPLEMENTARY INFORMATION: The Great Sand Dunes National Park Advisory Council will discuss public comments on conceptual alternatives under consideration in the park's General Management Plan process, will advise the park about development of additional alternatives and will discuss the role of the council in future public meetings. The public will have an opportunity to comment from 6:30 to 7:30 p.m. The Colorado College Conference Center at the Baca can be reached from U.S. Highway 285 by taking County Road T and turning onto Colorado College Road. The facility has no street address.

John Crowley,

Acting Regional Director.

[FR Doc. 04–19086 Filed 8–19–04; 8:45 am]

BILLING CODE 4312–CL–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Memorial Advisory Commission

AGENCY: Department of the Interior, National Park Service, National Capital Memorial Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the National Capital Memorial Advisory Commission (the Commission) will be held on Monday, September 13, 2004, at 1:30 p.m., at the National Building Museum, Room 312, 401 F Street, NW., Washington, DC.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and its environs. In addition to discussing general matters and conducting routine business, the Commission will review the status of legislative proposals introduced in the 108th Congress to establish memorials in the District of Columbia and its environs, as follows:

Action Items:

(1) Site Selection Study, Vietnam Veterans Memorial Education Center.

(2) Preliminary Design Concept, Memorial to Victims of Communism.

(3) Legislation currently under consideration by the 108th Congress.

Information Items:

(1) Congressional actions taken on bills previously reviewed by the Commission.

Other Business:

(1) General matters and routine business.

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Secretary to the Commission, at (202) 619–7097.

DATES: September 13, 2004, at 1:30 p.m.

ADDRESSES: National Building Museum, Room 312, 401 F Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Young, Secretary to the Commission, 202–619–7097.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 99–652, the Commemorative Works Act (40 U.S.C. Chapter 89 *et seq.*), to advise the Secretary of the Interior (the Secretary) and the Administrator, General Services Administration (the Administrator), on policy and procedures for establishment of, and proposals to establish, commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, DC, and its environs.

The members of the Commission are as follows:

Director, National Park Service.
Chairman, National Capital Planning Commission.
Architect of the Capitol.
Chairman, American Battle Monuments Commission.
Chairman, Commission of Fine Arts.
Mayor of the District of Columbia.
Administrator, General Services Administration.

Dated: July 22, 2004.

Joseph M. Lawler,

Acting Regional Director, National Capital Region

[FR Doc. 04–19085 Filed 8–19–04; 8:45 am]

BILLING CODE 4312–JK–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 24, 2004. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National

Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by September 4, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ALABAMA

Crenshaw County

Luverne Historic District, Bounded by 1st, 6th Sts., Legrande, Glenwood, Folmar and Hawkins Aves., Luverne, 04000926.

Jackson County

Princeton Historic District, (Paint Rock Valley MPS), Bounded by AL 65 and Cty. Rd. 3, Princeton, 04000927.

Mobile County

Chickasaw Shipyard Village Historic District, Bounded by Jefferson St., Jackson St., Yeend Ave., and Chickasaw Creek, Chickasaw, 04000924.

D'Iberville Apartments, 2000 Spring Hill Ave., Mobile, 04000925.

CALIFORNIA

Tuolumne County

Baker Highway Maintenance Station, 33950 CA 108, Strawberry, 04000928.

GEORGIA

DeKalb County

Scottish Rite Hospital for Crippled Children, 321 W. Hill St., Decatur, 04000929.

Talbot County

Elms, The, GA 36 at Sun Rise Rd. or Red Bone Rd., near Pleasant Hill, 3 mi. E of Woodland, Woodland, 04000930.

MASSACHUSETTS

Berkshire County

Elm-Maple-South Streets Historic District, 2 Depot St., 2–14 Elm St., 1–2 Larel Ln., 1–4 Maple St., 1–11 South St., Stockbridge, 04000932.

Hampden County

Prospect Park, Maple St., Arbor Way, Connecticut R, Holyoke, 04000931.

Middlesex County

Brigham Cemetery, off W. Main St. near Crescent St., Marlborough, 04000933.

Weeks Cemetery, Corner of Sudbury St. and Concord Rd., Marlborough, 04000934.

NEVADA

Clark County

Gold Strike Canyon—Sugarloaf Mountain Traditional Cultural Property, Address Restricted, Boulder City, 04000935.

NEW YORK

Saratoga County

Ruhle Road Lenticular Metal Truss Bridge, Ruhle Rd. over Ballston Creek, Malta, 04000954.

NORTH CAROLINA

Caldwell County

Dula—Horton Cemetery, End of an 0.25 mile Ln, off S side of NC 268, 1.4 mi. E of jct. with Grandin Rd., Grandin, 04000941.

Fountain, The, 1677 NC 268, Yadkin Valley, 04000942.

Lenoir, Walter James, House, NC 268, 0.3 mi. E of jct. with NC 1513, Yadkin Valley, 04000938.

Mariah's Chapel, NC 1552, 0.4 mi. SE of jct with NC 268, Grandin, 04000939.

Riverside, SW side NC 1552, 0.3 mi. SE of jct with NC 268, Grandin, 04000940.

OHIO

Cuyahoga County

Cleveland Dental Manufacturing Company Building, 3307 Scranton Rd., Cleveland, 04000936.

Ross County

McCafferty Run Farmstead, 17114 and 17226 OH 104, Chillocothe, 04000945.

OKLAHOMA

Custer County

McLain Rogers Park, Jct. of Tenth and Bess Rogers Dr., Clinton, 04000944.

Muskogee County

USS Batfish (SS–310), 3500 Batfish Rd., Muskogee, 04000943.

Tulsa County

Riverside Historic Residential District, Roughly bounded by the Midland Railway Bike Trail, Riverside Dr., S. Boston Ave., and E. 24th St. and E 21st St., Tulsa, 04000937.

TEXAS

Cottle County

Cottle County Courthouse Historic District, Roughly bounded by N. 7th, N. 10th, Garrett and Easly Sts., Paducah, 04000948.

Navarro County

Navarro County Courthouse, 300 W. 3rd Ave., Corsicana, 04000947.

Trinity County

Trinity County Courthouse Square, 162 W. First St., U.S. 287 at TX 94, Groveton, 04000946.

WASHINGTON

Chelan County

Wenatchee Fire Station #1, 136 S. Chelan Ave., Wenatchee, 04000953.

Spokane County

Five Mile Prairie School, (Rural Public Schools of Washington State MPS) 8621 N. Five Mile Rd., Spokane, 04000952.

WISCONSIN

Clark County

Neillsville Downtown Historic District (Boundary Increase), 432, 436, 442, 450 Hewett St., Neillsville, 04000951.

Eau Claire County

Eau Claire Park Company Addition Historic District, Roosevelt, McKinley, and Garfield bet. Park Ave. and State St., Eau Claire, 04000950.

Third Ward Historic District (Boundary Increase), Approx. seven blks in the Third Ward bounded by St. St., Summit Ave., Farwell St. and Garfield Ave., Eau Claire, 04000949.

A request for removal has been made for the following resource:

NEW YORK

Saratoga County

Ruhle Road Stone Arch Bridge Ruhle Rd. Malta, 88001699.

[FR Doc. 04–19056 Filed 8–18–04; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–326 (Second Review)]

Frozen Concentrated Orange Juice From Brazil

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on frozen concentrated orange juice from Brazil.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty on frozen concentrated orange juice from Brazil would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: July 6, 2004.

FOR FURTHER INFORMATION CONTACT: Megan Spellacy (202) 205–3190, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on

(202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background: On July 6, 2004, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (69 FR 44060, July 23, 2004). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list: Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

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 this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report: The prehearing staff report in the review will be placed in the nonpublic record on January 12, 2005, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing: The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on February 1, 2005, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 25, 2005. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 27, 2005, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions: Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is January 21, 2005. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is February 10, 2005; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before February 10, 2005. On March 4, 2005, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 8, 2005, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also 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 Commission's rules, each document filed by a party to the review must be served on all other parties to the review (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: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: August 16, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–19068 Filed 8–19–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,314]

ABB, Inc., Columbus, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 26, 2004 in response to a petition filed on behalf of workers of ABB, Inc., Columbus, Ohio.

The petitioning group of workers is covered by an active certification issued on August 26, 2002 which remains in effect until August 26, 2004 (TA–W–41,731). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 9th day of August, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19091 Filed 8–19–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,708]

Novellus System, Inc., San Jose, CA; Notice of Negative Determination on Reconsideration

On July 19, 2004, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on August 4, 2004 (69 FR 47183).

The petition for the workers of Novellus System, Inc., San Jose, California engaged in writing and testing software was denied because the petitioning workers did not produce an article within the meaning of section 222 of the Act.

The petitioner contends that the Department erred in its interpretation of work performed at the subject facility as a service and further conveys that software should be considered a product and workers performing software quality assurance should be considered workers engaged in production.

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The official stated that petitioning group of workers at the subject firm is engaged in designing and testing of the operational software. The official further clarified that the software is not recorded on any media device for further duplication and distribution to customers, but is rather used in semiconductor equipment manufactured by the subject firm.

The sophistication of the work involved is not an issue in ascertaining whether the petitioning workers are eligible for trade adjustment assistance, but rather only whether they produced an article within the meaning of section 222 of the Trade Act of 1974.

Writing, editing and testing software are not considered production of an article within the meaning of section 222 of the Trade Act. Petitioning workers do not produce an ''article'' within the meaning of the Trade Act of 1974. Information electronic databases, software and codes, which are not printed or recorded on media devices (such as CD–ROMs) for further mass production and distribution, are not tangible commodities, and they are not listed on the Harmonized Tariff Schedule of the United States (HTS), as classified by the United States International Trade Commission (USITC), Office of Tariff Affairs and Trade Agreements, which describes articles imported to the United States.

To be listed in the HTS, an article would be subject to a duty on the tariff schedule and have a value that makes it marketable, fungible and interchangeable for commercial purposes. Although a wide variety of tangible products are described as articles and characterized as dutiable in the HTS, informational products that could historically be sent in letter form and that can currently be electronically transmitted are not listed in the HTS. Such products are not the type of products that customs officials inspect and that the TAA program was generally designed to address.

The investigation on reconsideration supported the findings of the primary investigation that the petitioning group of workers does not produce an article. However, it was revealed that production of the semiconductor equipment occurs at the subject facility and that the software designed and tested by the workers is further integrated into this equipment. Thus, it was determined that the petitioning group of service workers support production of the semiconductor equipment at the subject facility.

The Department conducted an additional investigation to determine whether workers can be considered eligible for TAA as workers in support of production of the semiconductor equipment. The investigation in connection with the semiconductor equipment revealed that criteria (I.B) and (II.B) were not met. According to the information provided by the company official, sales and production of the semiconductor equipment increased at the subject firm during the relevant time period. Moreover, the subject firm did not shift production abroad, nor did it increase company imports, during the relevant period.

The petitioner further alleges that because workers lost their jobs due to a transfer of job functions, such as software quality assurance engineering to India, petitioning workers should be considered import impacted.

The company official stated that some software is electronically sent for testing in India, after which all the documents and codes are returned to Novellus System, Inc. in San Jose, California facility via electronic copies using e-mail.

Informational material that is electronically transmitted is not considered production within the context of TAA eligibility requirements, so there are no imports of products in this instance. Further, as the edited material does not become a product until it is recorded on media device, there was no shift in production of an ''article'' within the meaning of the Trade Act of 1974.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Novellus System, Inc., San Jose, California.

Signed in Washington, DC, this 10th day of August, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19098 Filed 8–19–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,302]

Olsonite Corporation, Newnan, GA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 22, 2004 in response to a worker petition which was filed by the UNITE! Southern Regional Joint Board of Georgia on behalf of workers at Olsonite Corporation, Newnan, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 9th day of August, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19092 Filed 8–19–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,128]

Precision Disc Corporation, Knoxville, TN; Notice of Revised Determination on Reconsideration

On June 3, 2004, the Department of Labor issued a Notice of Affirmative Determination Regarding Application for Reconsideration for workers of the subject firm. The notice was published in the **Federal Register** on June 15, 2004 (69 FR 33423).

To support the request for reconsideration, the petitioner supplied

additional major declining customers to supplement those that were surveyed during the initial investigation. The survey revealed increased customer imports of saw core products during the relevant period. The imports accounted for a meaningful portion of the subject plant's lost sales and production.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have not been met.

The investigation revealed that the petitioning worker group possess skills that are easily transferable.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at the subject firm contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Precision Disc Corporation, Knoxville, Tennessee, who became totally or partially separated from employment on or after January 27, 2003, through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are denied eligibility to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 12th day of August, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19100 Filed 8–19–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,061]

Prestolite Wire Corporation Including On-Site Leased Workers of Technical Associates, Tifton, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 29, 2004, applicable to workers of Prestolite Wire Corporation, Tifton, Georgia. The notice was published in the **Federal Register** on August 3, 2004 (69 FR 46576).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that leased workers of Technical Associates were employed on-site at the Tifton, Georgia location of Prestolite Wire Corporation.

Based on these findings, the Department is amending this certification to include on-site leased workers of Technical Associates working at Prestolite Wire Corporation, Tifton, Georgia.

The intent of the Department's certification is to include all workers employed at Prestolite Wire Corporation, who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–55,061 is hereby issued as follows:

All workers of Prestolite Wire Corporation, including on-site leased workers of Technical Associates, Tifton, Georgia, who became totally or partially separated from employment on or after June 1, 2003, through June 29, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC this 12th day of August 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19095 Filed 8–19–04; 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 July and August 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 country 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–55,142; Riddle Fabrics, Inc., Kings Mountain, NC.

TA–W–55,220; Calypte Biomedical Corp., Alameda, CA.

TA–W–55,278; Agilent Technologies, Manufacturing Test Business Unit, Loveland, CO.

TA–W–55,254; Amplas, Inc., Green Bay, WI.

TA–W–55,167; Textron Fastening Systems, Ring Screw Div., Warren, MI.

TA–W–54,999; Markey Machinery Co., Inc., Seattle, WA.

TA–W–54,982; Fort Hill Lumber Co., including leased workers of Express Personnel Services/Brown & Dutton, Grand Ronde, OR.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–55,333; Gateway Country Store, Whitehall Mall, Whitehall, PA.

TA–W–55,184; GE Consumer Finance, Center of Recovery Excellence, Alpharetta, GA.

TA–W–55,310; EV Benefits Management, Inc., Data Entry Department, Columbus, OH.

TA–W–55,259; Willow Creek Apparel, Inc., Jonesville, NC.

TA–W–55,303; Correctional Billing Services, a div. of Evercom Systems, Inc., Selma, AL.

TA–W–55,238; Tracfone Wireless, Inc., Call Center Div., Miami, FL.

TA–W–55,215; Global Telephone Sales of North America, LLC, Los Angeles, CA.

The investigation revealed that criterion (a)(2)(A)(I.A) and a(2)(B)(II.A) (no employment decline) has not been met.

TA–W–55,342; TSI Logistics, leased workers at Brown & Williamson Corp., Macon, GA.

TA–W–55,168; Dell World Trade L.P., Round Rock, TX.

TA–W–55,300; Taylortec, Inc., Hammond, LA.

TA–W–55,144; The Boeing Aircraft Co., Integrated Defense Systems, Wichita, KS.

The investigation revealed that criterion (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–55,340; Ripplewood Phosporous U.S., LLC, Formerly Akzo Nobel Functional Chemical LLC, Gallipolis Ferry, WV.

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–55,244; Four Corporation, Boiler Shop, Green Bay, WI.

TA–W–55,317; Saber Industries, Inc., Nashville, TN.

TA–W–55,203; Karolina Polymers, Inc., Hickory, NC.

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–55,349; Hardware Designers, Inc., Marienville, PA: July 26, 2003.

TA–W–55,114; M.A. Moslow & Brothers, Inc., Buffalo, NY: May 20, 2003.

TA–W–55,162 & A; Vaughan-Bassett Furniture Co., Inc., including on-site leased workers from Norman Williams and Associates, Sumter, SC and Corporate Headquarters, Galax, VA: June 29, 2003.

TA–W–55,185; Wash N Wear, Gallatin, TN: June 30, 2003.

TA–W–55,286; Conex Cable, Inc., including lased workers at Volt Services, Dublin, CA.

TA–W–55,249; Briar Knitting, Inc., Berwick, PA: July 13, 2003.

TA–W–55,116; Southern New Jersey Steel Co., Inc., Vineland, NJ: June 21, 2003.

TA–W–55,115 & A: Weyerhaeuser Co., Portland, OR and Beaverton, OR: June 20, 2003.

TA–W–55,169; Ciprico, Inc., Plymouth, MN: June 29, 2003.

TA–W–55,229 &A; APA Optics, Inc., Blaine, MN and Aberdeen, SD: July 7, 2003.

TA–W–55,208; Tecumseh Compressor Co., Tecumseh Div., Tecumseh, MI: July 2, 2003.

TA–W–55,272; RBX Industries, Inc., Corp. Headquarters, Roanoke, VA: June 28, 2003.

TA–W–55,113; Veltri Metal Products Liquidating, Inc., New Baltimore Plant, New Baltimore, MI: May 20, 2003.

TA–W–55,308 & A; Candor Hosiery Mills, Inc., Troy, NC and Biscoe, NC: July 22, 2003.

TA–W–55,294; GE Electric, Consumer and Industrial Div., Ravenna Lamp Plant, Ravenna, OH: July 16, 2003.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–55,260; Kincaid Furniture Company, Inc., Plant 5, Lenoir, NC: July 14, 2003.

TA–W–55,332; Holman Cooking Equipment, Inc., a subsidiary of Star Manufacturing, Saco, ME: July 28, 2003.

TA–W–55,224; Depuy Orthopedics, Inc., Depuy Casting Div., a div. of Johnson and Johnson, North Brunswick, NJ: June 22, 2003.

TA–W–55,264; Leica Geosystems GR, LLC, a div. of Leica Geosystems,

Inc., Grand Rapids, MI: July 15, 2003.

TA–W–55,283; Silver Capital Corp., d/b/a GTC International, including on-site leased workers from Edinfinite Solutions, Bedford Park, IL: July 13, 2003.

TA–W–55,313; C and D Die Casting Co., Inc., Chatsworth, CA: July 22, 2003.

TA–W–55,330; Jockey International, Inc., Maysville, KY: July 26, 2003.

TA–W–55,227; Robert Bosch Corp., Automotive Technology—Chassis Div., including leased workers at Olsten Staffing, Sumter, SC: July 2, 2003.

TA–W–55,327; Loger Industries, Inc., including leased workers of Advanced Placement Services, Inc., Lake City, PA: July 27, 2003.

TA–W–55,277; Carhartt, Inc., Madisonville Sewing Facility, Madisonville, KY: July 16, 2003.

TA–W–55,237; Pacific Coast Lighting, Chatsworth, CA: July 9, 2003.

TA–W–55,194; Dyer Fabrics, Inc., Dyersburg, TN: December 21, 2003.

TA–W–55,273; Am-Safe Commercial Products, a subsidiary of Marmon Group, including on-site leased workers from Accountants, Inc., Accoutemps, Checkmate Staffing, CHRC Creative Hem Resources, Encore Staffing, NESCO Services, Staffing Specialists, Superior Staffing Services, Volt Services and VSP Search, Tempe, AZ: July 16, 2003.

TA–W–55,192; Scientific Plastics, LTD, a div. of Astra Products, LTD, Miami Lakes, FL: July 2, 2003.

TA–W–55,189; Powerbrace Corp., a div. of Miner Enterprises, Inc., Kenosha, WI: June 30, 2003.

TA–W–55,268; Takane U.S.A., Inc., Torrance, CA: July 14, 2003.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue 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 has determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–55,294; GE Electric, Consumer & Industrial Div., Ravenna Lamp Plant, Ravenna, OH.

TA–W–55,308 & A; Candor Hosiery Mills, Inc., Troy, NC and Biscoe, NC.

TA–W–55,268; Takane U.S.A., Inc., Torrance, CA.

TA–W–55,272; RBX Industries, Inc., Corporate Headquarters, Roanoke, VA.

TA–W–55,113; Veltri Metal Products Liquidating, Inc., New Baltimore Plant, New Baltimore, MI.

TA–W–55,189; Powerbrace Corp., a div. of Miner Enterprises, Inc., Kenosha, WI.

TA–W–55,208; Tecumseh Compressor Co., Tecumseh Div., Tecumseh, MI.

TA–W–55,229 & A; APA Optics, Inc., Blaine, MN and Aberdeen, SD.

TA–W–55,192; Scientific Plastics, LTD, a div. of Astra Products, LTD, Miami Lakes, FL.

TA–W–455,169; Ciprico, Inc., Plymouth, MN.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–55,215; Global Telephone Sales of North America, LLC, Los Angeles, CA.

TA–W–55,203; Karolina Polymers, Inc., Hickory, NC.

TA–W–55,238; Tracfone Wireless, Inc., Call Center Division, Miami, FL.

TA–W–54,982; Fort Hill Lumber Company, including leased workers of Express Personnel Services/ Brown & Dutton, Grand Ronde, OR.

TA–W–54,999; Markey Machinery Company, Inc., Seattle, WA.

TA–W–55,303; Correctional Billing Services, a div. of Evercom Systems, Inc., Selma, AL.

TA–W–55,144; The Boeing Aircraft Company, Integrated Defense Systems, Wichita, KS.

TA–W–55,259; Willow Creek Apparel, Inc., Jonesville, NC.

TA–W–55,300; Taylortec, Inc., Hammond, LA.

TA–W–55,310; EV Benefits Management, Inc., Data Entry Department, Columbus, OH.

TA–W–55,167; Textron Fastening Systems, Ring Screw Div., Warren, MI.

TA–W–55,340; Ripplewood Phosporous U.S., LLC, Formerly Akzo Nobel Functional Chemical LLC, Gallipolis Ferry, WV.

TA–W–55,254; Amplas, Inc., Green Bay, WI.

TA–W–55,278; Agilent Technologies, Manufacturing Test Business Unit, Loveland, CO.

TA–W–55,317; Saber Industries, Inc., Nashville, TN.

TA–W–55,220; Calypte Biomedical Corp., Alameda, CA.

TA–W–55,184; GE Consumer Finance, Center of Recovery Excellence, Alpharetta, GA.

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issue 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–55,162 & A; Vaughan-Bassett Furniture Co., Inc., including on-site leased workers from Norman Williams and Associates, Sumter, SC and Corporate Headquarters, Galax, VA: June 29, 2003.

TA–W–55,185; Wash N Wear, Gallatin, TN: June 30, 2003.

TA–W–55,286; Conex Cable, Inc., including leased Workers at Volt Services, Dublin, CA: July 16, 2003.

TA–W–55,249; Briar Knitting, Inc., Berwick, PA:July 13, 2003.

TA–W–55,116; Southern New Jersey Steel Co., Inc., Vineland, NJ: June 21, 2003.

TA–W–55,115 & A; Weyerhaeuser Co., Portland, OR and Beaverton, OR: June 20, 2003.

TA–W–55,264; Leica Geosystems GR, LLC, a div. of Leica Geosystems, Inc., Grand Rapids, MI: July 15, 2003.

TA–W–55,283; Silver Capital Corp., d/b/a GTC International, including on-site leased workers from Edinfinite Solutions, Bedford Park, IL: July 13, 2003.

TA–W–55,313; C and D Die Casting Company, Inc., Chatsworth, CA: July 22, 2003.

TA–W–55,330; Jockey International, Inc., Maysville, KY: July 26, 2003.

TA–W–55,227; Robert Bosch Corp., Automotive Technology—Chassis Div., including leased workers at

Olsten Staffing, Sumter, SC: July 2, 2003.

TA–W–55,327; Loger Industries, Inc., including leased workers of Advanced Placement Services, Inc., Lake City, PA: July 27, 2003.

TA–W–55,277; Carhartt, Inc., Madisonville Sewing Facility, Madisonville, KY: July 16, 2003.

TA–W–55,237; Pacific Coast Lighting, Chatsworth, CA: July 9, 2003.

TA–W–54,194; Dyer Fabrics, Inc. Dyersburg, TN: December 21, 2003.

TA–W–55,273; Am-Safe Commercial Products, a subsidiary of Marmon Group, including on-site leased workers from Accountants, Inc., Accountemps, Checkmate Staffing, CHRC Creative Human Resources, Encore Staffing, NESCO Services, Staffing Specialists, Superior Staffing Services, Volt Services and VSP Search, Tempe, AZ: July 16, 2003.

I hereby certify that the aforementioned determinations were issued during the months of July and August 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: August 13, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–19093 Filed 8–19–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,709]

Summitville Tiles, Inc., Minerva, OH; Notice of Revised Determination on Reconsideration

On July 21, 2004, the Department of Labor issued an affirmation determination regarding the request for reconsideration of eligibility for workers and former workers of Summitville Tiles, Inc., Minerva, Ohio, to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The Department's determination notice was published in the **Federal Register** on August 4, 2004 (69 FR 47183). The initial petition denial was based on the finding that the subject firm did not separate or threaten to separate a significant number or proportion of workers during the relevant time period.

During the reconsideration investigation, the Department reviewed the Business Confidential Data Request which revealed that sales and production of ceramic tiles at the subject facility decreased during the relevant time periods.

A review of newly submitted information revealed that employment levels at the subject company declined during the relevant time period and that the subject company did not import any like or directly competitive products during the relevant time period. A customer survey was not conducted due to the number of subject company's customers.

Aggregate data shows a significant increase of ceramic tile imports during January–May 2004 from January–May 2003 levels.

Additional investigation has determined that the workers possess skills that are not easily transferable. A significant number or proportion of the worker group are age fifty years or over. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at the subject firm contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Summitville Tiles, Inc., Minerva, Ohio, who became totally or partially separated from employment on or after April 13, 2003, through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 10th day of August, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19097 Filed 8–19–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,394]

Technical Associates Employed at Prestolite Wire Corporation, Tifton, Georgia; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 6, 2004 in response to a petition filed by a state representative on behalf of workers of Technical Associates employed at Prestolite Wire Corporation, Tifton, Georgia.

The petitioning worker is covered by an active certification for workers of Prestolite Wire Corporation, Tifton, Georgia, issued on June 29, 2004 and which remains in effect (TA–W–55,061 as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 12th day of August, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19102 Filed 8–19–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,469 and TA–W–41,469F]

Telect, Liberty Lake, Washington; Including an Employee of Telect, Liberty Lake, Washington, Located in Maine; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 19, 2002, applicable to workers of Telect, Liberty Lake, Washington. The notice was published in the **Federal Register** on September 10, 2002 (67 FR 57453).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that a worker separation occurred involving an employee of the Liberty Lake, Washington facility of Telect working out of Maine. Ms. Allison O'Flaherty provided administrative support

services related to the production of fiber optic patchcords and pigtails at Telect, Liberty Lake, Washington.

Based on these findings, the Department is amending this certification to include an employee of the Liberty Lake, Washington facility of Telect located in Maine.

The intent of the Department's certification is to include all workers of Telect who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,469 is hereby issued as follows:

''All workers of Telect, Liberty Lake, Washington (TA–W–41,469), including an employee of Telect, Liberty Lake, Washington, located in Maine (TA–W–41,469F), who became totally or partially separated from employment on or after April 16, 2001, through August 19, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 10th day of August 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19101 Filed 8–19–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,985]

Tyco Safety Products, Research and Development Division, Westminster, MA; 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 Tyco Safety Products, Research and Development Division, Westminster, Massachusetts. 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–54,985; Tyco Safety Products Research and Development Division Westminster, Massachusetts (August 13, 2004)

Signed in Washington, DC this 13th day of August, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–19096 Filed 8–19–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,125]

Volt Temporary Services, Leased Workers Onsite at SR Telecom Inc., Redmond, WA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of July 28, 2004, a petitioner requested administrative reconsideration of the Department's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Notice was signed on July 7, 2004 and published in the **Federal Register** on August 3, 2004 (69 FR 46574).

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of August, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19094 Filed 8–19–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is

encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determination Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT030001 (Jun. 13, 2003)
CT030003 (Jun. 13, 2003)
CT030004 (Jun. 13, 2003)
CT030005 (Jun. 13, 2003)
Massachusetts
MA030001 (Jun. 13, 2003)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon And Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.acess.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions Include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 13th day of August, 2004.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–18914 Filed 8–19–04; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension*: Revision.

2. *The title of the information collection*: NRC Form 4, ''Cumulative Occupational Dose History'' and NRC Form 5, ''Occupational Exposure Record for a Monitoring Period''.

3. *The form number if applicable*: NRC Form 4 (3150–0005); NRC Form 5 (3150–0006).

4. *How often the collection is required*: NRC Form 4: Occasionally NRC Form 5: Annually.

5. *Who will be required or asked to report*: NRC licensees who are required to comply with 10 CFR part 20.

6. *An estimate of the number of annual responses*: NRC Form 4: 24,352 (24,164 from reactor licensees and 188 from materials licensees) and NRC Form 5: 175,456 (161,396 from reactor licensees and 14,060 from materials licensees).

7. *The estimated number of annual respondents*: NRC Form 4: 239 (104 reactor sites and 135 materials licensees); NRC Form 5: 4,602 (104 reactors and 135 materials licensees, plus an additional 4,363 materials licensees recordkeepers).

8. *An estimate of the total number of hours needed annually to complete the requirement or request*: NRC Form 4: 12,176 hours or an average of 0.5 hours per response; NRC Form 5: 67,460 hours (57,900 hours for recordkeeping or an average of 0.33 hours per record and 9,560 hours for reporting or an average of 40 hours per licensee).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies*: Not applicable.

10. *Abstract*: NRC Form 4 is used to record the summary of an individual's cumulative occupational radiation dose up to and including the current year to ensure that the dose does not exceed regulatory limits.

NRC Form 5 is used to record and report the results of individual monitoring for occupational radiation exposure during a one-year (calendar year) period to ensure regulatory compliance with annual radiation dose limits.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC Worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 20, 2004. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. OMB Desk Officer, Office of Information and Regulatory Affairs (3150–0005 and 3150–0006), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 12th day of August, 2004. For the Nuclear Regulatory Commission.

Beth St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–19104 Filed 8–19–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on September 22–23, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows:

Wednesday and Thursday, September 22–23, 2004—8:30 a.m. until the conclusion of business each day

The Subcommittee will review the staff's final safety evaluation report on the industry guidelines related to resolution of GSI–191, ''Assessment of Debris Accumulation on PWR Sump Performance.'' The Subcommittee will also review the final staff resolution of GSI–185, ''Control of Recriticality Following Small-Break LOCAs in PWRs.'' The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (Telephone: 301–415–8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: August 12, 2004.

Marvin D. Sykes,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 04–19103 Filed 8–19–04; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Disclosure to Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') intends to request that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of the collection of information under its regulation on Disclosure to Participants, 29 CFR part 4011 (OMB control number 1212–0050; expires November 30, 2004). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by October 19, 2004.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at that address during normal business hours. Comments also may be submitted electronically through the PBGC's Web site at *http://www.pbgc.gov/paperwork*, or by fax to (202) 326–4112. The PBGC will make all comments available on its Web site, *http://www.pbgc.gov.*

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office or calling (202) 326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4040.) The regulation on Disclosure to Participants may be accessed on the PBGC's Web site at *http://www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, (202) 326–4024. (For TTY and TDD, call 800–877–8339 and request connection to (202) 326–4024.)

SUPPLEMENTARY INFORMATION: Section 4011 of the Employee Retirement Income Security Act of 1974 requires plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plan's funding status and the limits on the PBGC's guarantee.

The PBGC's regulation implementing this provision (29 CFR part 4011) prescribes which plans are subject to the notice requirement, who is entitled to receive the notice, and the time, form, and manner of issuance of the notice. The notice provides recipients with meaningful, understandable, and timely information that will help them become better informed about their plans and assist them in their financial planning.

The collection of information under the regulation has been approved by OMB under control number 1212–0050 through November 30, 2004. The PBGC intends to request that OMB extend its approval for another three years. 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 PBGC estimates that an average of 3,917 plans per year will respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 2.15 hours and $148 per plan, with an average total annual burden of 8,428 hours and $579,425.

The PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the 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.

Issued in Washington, DC, this 17th day of August, 2004.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 04–19168 Filed 8–19–04; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50195; File No. SR–Amex–2004–61]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Elimination of the $72,000 Options Fee Cap

August 13, 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 August 2, 2004, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. The Amex submitted the proposed rule change under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate the $72,000 monthly fee cap in single option classes applicable to specialists and registered options traders (''ROTs''). The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex is proposing to eliminate the current options fee cap of $72,000 per month in any single option class for Exchange specialists and ROTs. This fee cap was originally adopted by the Exchange in November 2003 and implemented in December 2003.[5]

The Amex currently imposes charges for transactions in options executed on the Exchange by specialists and ROTs. Current charges for specialist and ROT transactions in equity options and index options are $0.30 and $0.31, respectively, per contract side. Given current transaction charges for equity and index options, specialists and ROTs to reach the fee cap would need to trade 240,000 contracts in equity options and 232,258 contracts in index options.

The fee cap was implemented by the Exchange to attract additional order flow expected to result from the financial incentives provided to Exchange specialist units and ROTs. To date, the Exchange has not experienced a significant increase in order flow. Accordingly, the Exchange proposes to eliminate the fee cap as described above.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular, regarding the equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using exchange facilities.

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder,[9] because it establishes or changes a due, fee, or other charge imposed by Amex. At any time within 60 days of the filing of the 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, 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–Amex–2004–61 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–2004–61. 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. Copies of the filing also will be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 49019 (January 5, 2004), 69 FR 2023 (January 13, 2004) (SR–Amex–2003–104).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(a)(ii).

[9] 17 CFR 240.19b–4(f)(2).

available for inspection and copying at the principal offices 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–2004–61 and should be submitted on or before September 10, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–19065 Filed 8–19–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50189; File No. SR–Amex–2004–05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto by the American Stock Exchange LLC To List and Trade Certain Vanguard International Equity Index Funds

August 12, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 20, 2004, the American Stock Exchange LLC (''Amex'' 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 the Exchange. The Amex amended the proposed rule change first on March 9, 2004.[3] The Exchange filed a second amendment to the proposal on April 22, 2004 and requested accelerated approval.[4] The Exchange filed a third amendment to the proposal on May 14, 2004.[5] The Exchange filed a fourth amendment to the proposal on August 5, 2004.[6] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade under Amex Rules 1000A *et seq.* the shares of certain index funds that are series of the Vanguard International Equity Index Fund. The funds seek to track the following regional indices compiled by Morgan Stanley Capital International Inc. (MSCI®)[7] (''MSCI''): MSCI Europe Index, MSCI Pacific Index, and MSCI Emerging Markets Select Index.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange 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

Amex Rules 1000A *et seq.* provide standards for the listing of Index Fund Shares, which are securities issued by an open-end management investment company (open-end mutual fund) for Exchange trading. These securities are registered under the Investment Company Act of 1940[8] (''1940 Act'') as well as the Exchange Act.[9] Index Fund Shares are defined in Amex Rule 1000A as securities based on a portfolio of stocks or fixed income securities that seek to provide investment results that correspond generally to the price and yield of a specified foreign or domestic stock index or fixed income securities index.

The Exchange proposes to list and trade under Amex Rules 1000A *et seq.* the following three securities issued by funds (each a ''Vanguard Index Fund'' or ''Fund'') that are series of the Vanguard International Equity Index Fund (''Trust''):[10]

- Vanguard European VIPERs, a share class of Vanguard European Stock Index Fund, which seeks to track the MSCI Europe Index;
- Vanguard Pacific VIPERs, a share class of Vanguard Pacific Stock Index Fund, which seeks to track the MSCI Pacific Index; and
- Vanguard Emerging Market VIPERs, a share class of Vanguard Emerging Markets Stock Index Fund, which seeks to track the Select Emerging Markets Index.

For descriptions of the underlying indices for the Funds, see ''Target Indices—Key Characteristics'' below as well as Exhibits A to C to the Exchange's proposed rule change. Index descriptions, component selection criteria, index maintenance and issue changes, the top components of each index, and portfolio composition and characteristics are attached as Exhibits A through C of the Form 19b–4 submitted by the Exchange and are available as specified in Item IV below. The index on which a particular Fund is based is referred to as a ''Target Index,'' and the securities included in such index are referred to as ''Component Securities.'' The Vanguard Group, Inc. (''Adviser'' or ''Vanguard'') is the investment adviser to each Fund.[11] The Adviser is registered under

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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.

[3] *See* letter from Marija Willen, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 8, 2004 (''Amendment No. 1''). Amendment No. 1 replaced in its entirety Amex's original filing. Amendment No. 1 made various nonsubstantive changes to the proposed rule change and clarified the manner in which costs associated with the proposed new listings would be paid.

[4] *See* letter from Marija Willen, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated April 21, 2004 (''Amendment No. 2''). Amendment No. 2 further clarified Amex's proposal, explained the indices underlying the proposed fund products, and replaced the earlier amended filing in its entirety.

[5] *See* letter from Marija Willen, Associate General Counsel, Amex, to Florence Harmon, Division, Commission, dated May 13, 2004 (''Amendment No. 3''). Amendment No. 3 addressed questions arising during the course of Commission staff review.

[6] *See* letter from Marija Willen, Associate General Counsel, Amex, to Florence Harmon, Division, Commission, dated August 4, 2004 (''Amendment No. 4''). Amendment No. 4 provided supplemental information regarding the indices on which the proposed listings are based, including the index maintenance methodology and characteristics. The amendment also addressed the Funds' investment objectives, availability of information about Fund Shares, and local trading restrictions that will affect the ability of the Funds to do ''in-kind'' creation and redemption transactions.

[7] ''MSCI® is a service mark of Morgan Stanley & Co. Incorporated.

[8] 15 U.S.C. 80a *et seq.*

[9] 15 U.S.C. 78a *et seq.*

[10] The Trust has other funds that issue VIPER Shares. The Exchange states that those issues of VIPER Shares met the requirements of Amex Rule 1000A, Commentary .02, for listing pursuant to Rule 19b-4(e) of the Exchange Act.

[11] Vanguard requested an exemption from various provisions of the 1940 Act and rules thereunder (''Application''). *See* Investment Company Act Release No. 26246 (November 3, 2003), 68 FR 63135 (November 7, 2003) (File No. 812–12860). The Commission granted the requested exemption in an order dated December 1, 2003. *See* Investment Company Act Release No. 26281 (December 1,

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the Investment Advisers Act of 1940 (''Advisors Act'').[12] Pursuant to Rule 10A–3 of the Exchange Act [13] and Section 3 of the Sarbanes-Oxley Act of 2002,[14] the Exchange will prohibit the individual or conditional listings of any security of an issuer that is not in compliance with the requirements set forth therein.[15]

Amex represents that, while the Adviser will manage each Fund, the Trust's Board of Trustees (''Board'') will have overall responsibility for the Funds' operations. Amex further represents that the composition of the Board is, and will be, in compliance with the requirements of Section 10 of the 1940 Act.[16]

Vanguard Marketing Corporation (''Distributor''), a wholly owned subsidiary of Vanguard and a broker-dealer registered under the Exchange Act, is the principal underwriter and distributor of Creation Units (as defined below) of the Funds.[17]

Vanguard Index Participation Equity Receipts (''VIPER Shares'') are a class of exchange-traded securities that represent an interest in the portfolio of stocks held by a particular Vanguard Index Fund. In addition to VIPER Shares, the Funds offer classes of shares that are not exchange-traded, which are referred to as ''Conventional Shares.'' [18]

VIPER Shares will be registered in book-entry form only, and the Funds will not issue individual share certificates. The Depository Trust Company (''DTC'') or its nominee will be the record or registered owner of all outstanding VIPER Shares. Beneficial ownership of VIPER Shares will be shown on the records of the DTC or DTC participants.

A. Target Indices, Investment Objectives, and Tracking Error

As noted in the Application, each Fund seeks to track, as closely as possible, the performance of its Target Index.[19] In seeking to track its Target Index, each Fund uses the ''replication'' method, in which each stock found in the Target Index is held in about the same proportion as represented in the index itself. Each Fund will invest at least 90% of its assets in the component securities of its respective Target Index. To the extent that a Fund invests in instruments other than common stocks included in its Target Index, it will invest no more than 10% of its assets in those other instruments.[20] Such instruments could include stock and index futures, options on stocks and futures, convertible securities, swap agreements, cash investments, forward foreign currency investments, foreign currency exchange contracts, shares of other investment companies (within the limits permitted by Section 12(d)(1) of the 1940 Act, 15 U.S.C. 80a–12(d)(1)), stocks about to be added to the Target Index, and any other instrument not inconsistent with the Fund's investment policies as described in detail in its registration statement, which the Adviser believes will help the Fund to track the performance of its Target Index.

Each Fund will maintain regulated investment company compliance, which requires, among other things, that, at the close of each quarter of the Fund's taxable year, not more than 25% of its total assets may be invested in the securities of any one issuer.[21]

According to the Application, each of the Funds historically has tracked its Target Index very closely. Measured over virtually any period, the gap between the performance of a Fund and its Target Index rarely exceeds 1% per annum, and in almost all cases is significantly less than that. The Exchange states that it expects that, in the future, the Funds will track their Target Indices with a similar degree of precision and will have a tracking error of less than 5% per annum.

B. Index Maintenance

MSCI describes its index maintenance in terms of three broad categories of implementation of changes:

- Annual full country index reviews that systematically re-assess the various dimensions of the equity universe for all countries and are conducted on a fixed annual timetable;
- Quarterly index reviews, aimed at promptly reflecting other significant market events; and
- Ongoing event-related changes, such as mergers and acquisitions, which are generally implemented in the indices rapidly as they occur.

Potential changes in the status of countries (stand-alone, emerging, developed) follow their own separate timetables. These changes are normally implemented in one or more phases at the regular annual full country index review and quarterly index review dates.

MSCI carries out the annual full country index review for all the MSCI

2003). The relief granted is substantially similar to the relief granted by the Commission in December 2000 to Vanguard Index Funds *et al. See* Investment Company Act Release No. 24789 (December 12, 2000), 65 FR 79439 (December 19, 2000) (approving File No. 812–12094). Information in this filing regarding the Funds is based on material in the Application and each Fund's registration statement.

[12] 15 U.S.C. 80b–1 *et seq.*

[13] 17 C.F.R. 240.10A–3.

[14] *See* Section 3 of Pub. L. No. 107–204, 116 Stat. 745 (2002).

[15] Telephone conversation between Marija Willen, Associate General Counsel, Amex, and Brian Trackman, Attorney, Division, Commission, on May 21, 2004.

[16] 15 U.S.C. 80a–10.

[17] As with other VIPER Shares, the Distributor is affiliated with the investment advisor. According to the Application, the Distributor facilitates creation and redemption orders for Authorized Participants. The Distributor is not involved in the selection of any portfolio securities, and appropriate information barriers and insider trading policies exist to prevent the misuse of non-public information. Telephone conversation between Scott Ebner, Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 12, 2004.

[18] As described in the Application, the Vanguard Index Funds organizational documents permit the Vanguard Index Funds to issue shares of different classes. The European Stock Index Fund and the Pacific Stock Index Fund also offer three classes of Conventional Shares (Investor, Admiral and Institutional classes) and the Pacific Stock Index Fund offers two classes of Conventional Shares (Investor and Institutional classes).

[19] The prospectuses for the Funds disclose that each Fund reserves the right to substitute a different index for the Target Index that the Fund currently tracks. Substitution could occur if the current index is discontinued, the Fund's license with the sponsor of the current index is terminated, or for any other reason determined in good faith by the Board. In every such instance, the substitute index would measure the same general market as the current index. Fund shareholders would be notified in the event that a Fund's current index is replaced, and investors who hold their shares through a broker or other intermediary would receive the notification from their intermediary. Should the Fund substitute a different index for the current Target Index, the Exchange will file a proposed rule change pursuant to Form 19b–4 to address, among other things, the listing and trading characteristics of the new index and the Exchange's surveillance procedures applicable to the new index. *See* Amendment No. 3.

[20] Each of these Funds will invest not more than 10% of fund assets in ADRs that are not included in component securities of their Target Index. Currently, the Target Indices do not contain ADRs. To the extent that these Funds invest more than 10% of their assets in ADRs, these ADRs shall be listed on a national securities exchange or quoted on the Nasdaq NMS. Telephone conversation between Scott Ebner, Associate Director, New Product Development, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 12, 2004.

[21] In order for a Fund to qualify for tax treatment as a regulated investment company, it must meet several requirements under the IRC. Among these is the requirement that, at the close of each quarter of the Fund's taxable year, (i) at least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value if the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer, and (ii) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or two or more issuers that are controlled by the Fund (within the meaning of Section 851 (b)(4)(B) of the Internal Revenue Code) and that are engaged in the same or similar trades or businesses or related trades or business (other than U.S. government securities or the securities of other regulated investment companies).

Standard Country Indices once every 12 months and implements any changes as of the close of the last business day of May. The implementation of changes resulting from a quarterly index review occurs on only three dates throughout the year: as of the close of the last business day of February, August and November. Any Country Indices may be impacted at the quarterly index review. MSCI Index additions and deletions due to quarterly index rebalancings are announced at least two weeks in advance.

MSCI makes changes to the methodologies, including changes to the Country Indices selected for each of the Target Indices, public via print and electronic media, and in particular, makes the press releases regarding any changes available on its Web site.

In constructing its indices, MSCI aims to target a free float-adjusted market representation of 85% within each industry group, within each country. However, because of differences in the structure of industries, this industry representation target may not be exactly and uniformly achieved in the indices across all industry groups. The differences in the structure of industries, and other considerations, may lead to over- or under-representation in certain industries. In these instances, the indices are constructed with a view to minimizing the divergence between the industry group representation achieved in the index and the 85% representation guideline. Since the over- and under-representation of industries is unlikely to be exactly off-setting, the average industry group representation achieved in a given country is also likely to be different from the 85% level.

As to defining the industry groups, MSCI uses the Global Industry Classification Standard (GICS), under which each company is assigned uniquely to one sub-industry according to its principal business activity. Therefore, a company can only belong to one industry grouping at each of the four levels of the GICS.

In connection with the possibility of index substitution referenced in footnote 5 to Amendment No. 2 to this filing, the Exchange represents that if a Fund substitutes a different index for the Target Index that it currently tracks, the Exchange will take appropriate steps towards listing approval, including filing for a rule change with the Commission, as necessary in light of then-existing Exchange listing standards.

C. Dissemination of Index Information

The Funds have been advised by MSCI that the value of each Fund's Target Index is now and will be disseminated intra-day at regular intervals (every 60 seconds) as individual Component Securities change in price. These intra-day values based on the sale reporting in the foreign market of the Target Indices will be disseminated real time throughout the foreign market trading day by organizations authorized by MSCI, including, by subscription, from quote vendors such as Bloomberg, Dow Jones Markets, DRI/McGraw Hill, Lipper Analytical, Quick, Quotron, Reuters, and Telekurs. In addition, these organizations will disseminate values for each Target Index once each trading day, based on closing prices in the relevant exchange market.

The daily closing index value and the percentage change in the daily closing index value for the Target Indices are publicly available on the MSCI Web site at *http://www.msci.com*. In addition, various news publications (*e.g.*, *Barron's*, *Business Week*, *Forbes*, *Global Finance*, *Investor's Daily*, *The New York Times*, and *The Wall Street Journal* in the United States) publish data for certain MSCI indices. For example, *The Wall Street Journal* has been publishing the closing index value for MSCI indices covering the United States, the United Kingdom, Canada, Japan, France, Germany, Hong Kong, Switzerland, Australia, the World, and EAFE (Europe, Australasia, and Far East).

Data—including weights, index shares, closing prices and corporate actions—regarding each Target Index is available to MSCI subscribers through various methods of delivery. MSCI index data may be delivered to subscribers directly from MSCI on a daily or monthly basis via electronic delivery methods. MSCI subscribers also may receive index data on a monthly or quarterly basis in print format via express mail. Several independent data vendors also package and disseminate MSCI data in various value-added formats (including vendors displaying both securities and index levels, such as FAME, FactSet, Datastream, and RIMES, and vendors displaying index levels only, such as Bloomberg, Dow Jones Markets, DRI/McGraw Hill, Lipper Analytical, Quick, Quotron, Reuters, and Telekurs). According to the Adviser, compared to the MSCI data available free of charge from the MSCI Web site, the data available to users subscribing to quote vendors such as Bloomberg and Reuters includes more frequent calculation and dissemination of index levels, including ''real-time'' feeds for certain indices, while the data available to MSCI paid subscribers (either directly from MSCI or from an independent ''full data'' vendor) includes more detailed information in respect of the securities included in a given index.

D. Target Indices—Key Characteristics

General: As further described below, the Target Indices are constructed to provide broad and fair market representation in a given market. MSCI adjusts the market capitalization of index constituents for free float and targets for index inclusion 85% of free float adjusted market capitalization in each industry group in each country. MSCI defines the free float of a security as the proportion of shares outstanding that are deemed to be available for purchase in the public equity markets by international investors. In practice, limitations on free float available to international investors include:

- Strategic and other shareholdings not considered part of available free float.
- Limits on share ownership for foreign investors.

MSCI free-float adjusts the market capitalization of each security using an adjustment factor referred to as the Foreign Inclusion Factor (FIF). The free float-adjusted market capitalization of a security is calculated as the product of the FIF and the security's full market capitalization.

Information about average daily trading volume of the Target Indices, as of May 2004, is as follows:

- The five highest weighted stocks in the MSCI Europe Index—which represent 14.8% of index weight—had an average daily trading volume in excess of 100 million shares during the past two months. 97.9% of the components stocks traded at least 250,000 shares in each of the previous six months.
- The five highest weighted stocks in the MSCI Pacific Index—which represent 11.15% of index weight—had an average daily trading volume in excess of 4 million shares during the past two months. 95.9% of the components stocks traded at least 250,000 shares in each of the previous six months.
- The five highest weighted stocks in the Select Emerging Markets Index—which represent 16.45% of index weight—had an average daily trading volume in excess of 4.5 million shares during the past two months. 96.9% of the components stocks traded at least 250,000 shares in each of the previous six months.

MSCI Europe Index: The MSCI Europe Index is a free float-adjusted market capitalization weighted index that is designed to measure developed market equity performance in Europe. It comprises 16 of the 50 countries for which MSCI has indices. Each MSCI country index is created separately and then aggregated, without change, into the larger regional index. Currently, the MSCI Europe Index includes Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom. As of December 2003, the Index contained 539 components with a total market capitalization of $5,236,148,846,065. The average market capitalization was $9,714,561,867. The ten largest constituents represent approximately 24.05% of the index weight. The five highest weighted stocks in the MSCI Europe Index—which represent 14.8% of index weight—had an average daily trading volume in excess of 100 million shares during the past two months. Additional detail on the MSCI Europe Index can be found in Exhibit A to the Amex filing, which is available at the principal office of the Amex and at the Commission.

MSCI Pacific Index: The MSCI Pacific Index is a free float-adjusted market capitalization weighted index that is designed to measure equity market performance in the Pacific region. It comprises five of the 50 countries for which MSCI has indices. Each MSCI country index is created separately and then aggregated, without change, into the larger regional index. Currently, the MSCI Pacific Index includes Australia, Hong Kong, Japan, New Zealand, and Singapore. As of December 31, 2003, the Index contained 466 components with a total market capitalization of $2,145,036,798,509. The average market capitalization was $4,603,083,259. The ten largest constituents represent approximately 18.59% of the index weight. The five highest weighted stocks in the MSCI Pacific Index—which represent 11.15% of index weight—had an average daily trading volume in excess of 4 million shares during the past two months. Additional detail on the MSCI Pacific Index can be found in Exhibit B to the Amex filing, which is available at the principal office of the Amex and at the Commission.

Select Emerging Markets Index: The Select Emerging Markets Index is a free float-adjusted market capitalization weighted index and represents the securities included in the following standard MSCI Country Indices: Argentina, Brazil, Chile, China, Czech Republic, Hungary, India, Indonesia, Israel, Korea, Mexico, Peru, Philippines, Poland, South Africa, Taiwan, Thailand and Turkey. The weight of each country in the index is reviewed on a monthly basis. After the calculation of the last business day of the month, MSCI reviews the weight of each country in the index. If the weight of a country is above 20%, the initial weight of this country for the calculation of the first business day of the month is set to 20% and the excess amount is distributed among the other constituents based on their respective weights. The weight of the countries in the index will then fluctuate according to market movements until the end of the month when the monthly monitoring is performed once again. As of December 31, 2003, the Index contained 533 components with a total market capitalization of $740,350,335,632. The average market capitalization was $1,389,025,020. The ten largest constituents represent approximately 23.76% of the index weight. The five highest weighted stocks in the Select Emerging Markets Index—which represent 16.45% of index weight—had an average daily trading volume in excess of 4.5 million shares during the past two months. Additional detail on the Select Emerging Markets Index can be found in Exhibit C to the Amex filing, which is available at the principal office of the Amex and at the Commission.

E. Availability of Information About VIPER Shares

The Exchange states that Vanguard's Web site, *http://www.Vanguard.com*, is and will be publicly accessible at no charge, and will contain the following information for each Fund's VIPER Shares: (a) The prior business day's closing net asset value (''NAV''), the mid-point of the bid-asked spread at the time that the Fund's NAV is calculated (''Bid-Asked Price''),[22] and a calculation of the premium or discount of the Bid-Asked Price in relation to the closing NAV; (b) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's VIPER Shares traded at a premium or discount to NAV based on the Bid-Asked Price and closing NAV, and the magnitude of such premiums and discounts; (c) the Fund's Prospectus and two most recent reports to shareholders; and (d) other quantitative information such as daily trading volume and a comparison of the performance of each share class of each Fund to the performance of the relevant Target Index, *e.g.,* the tracking error. In addition, the product description for each Fund (''Product Description'') will state that the Adviser's Web site at *http://www.Vanguard.com* has information about the premiums and discounts at which the Fund's VIPER Shares have traded.[23]

Amex will disseminate for each Fund on a daily basis by means of Consolidated Tape Association (''CTA'') and CQ High Speed Lines information with respect to the Intraday Indicative Value (as defined and discussed below under ''Dissemination of Intraday Indicative Value''), recent NAV, shares outstanding, and estimated cash amount and total cash amount per Creation Unit. The Exchange will make available on its Web site daily trading volume, closing price, the NAV, and final dividend amounts to be paid for each Fund. The closing prices of the Deposit Securities (as defined below) are readily available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources in the relevant country, or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services.

The Exchange states that beneficial owners of VIPER Shares (''Beneficial Owners'') will receive all of the statements, notices, and reports required under the 1940 Act and other applicable laws. They will receive, for example, annual and semi-annual fund reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of fund distributions, and Form

[22] Because the NAV for all share classes of all Vanguard funds is calculated as of the close of the New York Stock Exchange (''NYSE'') (usually 4 p.m.), but the market for VIPER Shares and other exchange traded funds does not close until 4:15 p.m., the closing market price is not measured at the same time as NAV. This difference in timing could lead to discrepancies between performance based on NAV and performance based on market price that give investors an inaccurate picture of the correlation between the two figures. To remedy this problem, the Funds compare performance of a Fund's VIPER Shares based on NAV to performance of the VIPER Shares based on the mid-point of the bid-asked spread at the time NAV is calculated. By calculating market-based and NAV-based performance at the same time, the Exchange states, according to the Application, two performance figures will be comparable, and any differences will be attributable to market forces rather than timing differences.

[23] See ''Prospectus Delivery'' below regarding the Product Description. The Exemptive Order granted relief from Section 24(d) of the 1940 Act, which relief permits dealers to sell VIPER Shares in the secondary market unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933.

1099–DIVs. Some of these documents will be provided to Beneficial Owners by their brokers, while others will be provided by the Fund through the brokers.

F. Creation and Redemption of VIPER Shares

Each Fund will issue and redeem VIPER Shares only in aggregations of a specified number (''Creation Units'').[24] Purchasers of Creation Units will be able to separate a Creation Unit into individual VIPER Shares. The actual number of VIPER Shares in a Creation Unit may differ from Fund to Fund, but will be no less than 50,000. Once the number of VIPER Shares in a Creation Unit is determined, it will not change thereafter (except in the event of a stock split or similar revaluation). The initial value of a VIPER Share will range from $50 to $100 per share, depending on the Fund.

Creation: Persons purchasing Creation Units from a Fund must make an in-kind deposit of a basket of securities (''Deposit Securities'') consisting of stocks selected by the Adviser from among the stocks contained in the issuing fund's portfolio, together with an amount of cash specified by the Adviser (''Balancing Amount''), plus the applicable transaction fee (''Transaction Fee''). The Deposit Securities and the Balancing Amount collectively are referred to as the ''Creation Deposit.'' The Balancing Amount is a cash payment designed to ensure that the value of a Creation Deposit is identical to the value of the Creation Unit it is used to purchase. The Balancing Amount is an amount equal to the difference between the NAV of a Creation Unit and the market value of the Deposit Securities.[25] The Transaction Fee is a fee imposed by the Funds on investors purchasing (or redeeming—see ''Redemption,'' below) Creation Units. The purpose of the Transaction Fee is to protect the existing shareholders of the Funds from the dilutive effect of the transaction costs (primarily custodial costs) that the Funds incur when investors purchase (or redeem) Creation Units.[26]

The Adviser will make available through the DTC or the Distributor on each business day, prior to the opening of trading on the Exchange, a list of names and the required number of shares of each Deposit Security to be included in the Creation Deposit for each Fund.[27] The Adviser also will make available on a daily basis information about the previous day's Balancing Amount.

The Funds reserve the right to permit or require a purchasing investor to substitute an amount of cash or a different security to replace any prescribed Deposit Security.[28] Substitution might be permitted or required, for example, because one or more Deposit Securities may be unavailable, may not be available in the quantity needed to make a Creation Deposit, or may not be eligible for trading by an Authorized Participant[29] (or the investor on whose behalf the Authorized Participant is acting) due to local trading restrictions or other circumstances.[30] Brokerage commissions incurred by a Fund to acquire any Deposit Security not part of a Creation Deposit are expected to be immaterial, and in any event the Adviser represents that it will adjust the relevant Transaction Fee to ensure that the Fund collects the extra expense from the purchaser.

As noted above, on each business day, each Fund will make available a list of names and amount of each security constituting the current Deposit Securities and the Balancing Amount effective as of the previous business day. As noted below in ''Dissemination of Intraday Indicative Value,'' the Exchange will disseminate through the facilities of the CTA, at regular intervals (currently anticipated to be 15-second intervals) during the Exchange's regular trading hours, the Intraday Indicative Value on a per-VIPER-Share basis. The Funds will not be involved in, or responsible for, the calculation or dissemination of any such amount and will make no warranty as to its accuracy.[31]

Redemption: VIPER Shares in Creation-Unit-size aggregations will be redeemable on any day on which the New York Stock Exchange is open in exchange for a basket of securities (''Redemption Securities''). As it does for Deposit Securities, the Adviser will make available to Authorized Participants on each business day prior to the opening of trading a list of the names and number of shares of Redemption Securities for each Fund. The Redemption Securities given to redeeming investors in most cases will be the same as the Deposit Securities required of investors purchasing Creation Units on the same day.[32]

[24] The Funds will offer all current and future holders of Conventional Shares, except those holding Conventional Shares through a 401(k) or other participant-directed employer-sponsored retirement plan, the opportunity to convert such shares into VIPER Shares of equivalent value (''Conversion Privilege''). Many shareholders have taken advantage of the Conversion Privilege in those funds that currently offer VIPER Shares. The Conversion Privilege will be a ''one-way'' transaction only. Holders of Conventional Shares may convert those shares into VIPER Shares, but Beneficial Owners of VIPER Shares will not be permitted to convert those shares into Conventional Shares.

[25] If the market value of the Deposit Securities is greater than the NAV of a Creation Unit, then the Balancing Amount will be a negative number, in which case the Balancing Amount will be paid by the Fund to the purchaser, rather than vice versa.

[26] If a Fund permits a purchaser to deposit cash in lieu of depositing one or more Deposit Securities, the purchaser will be assessed an appropriate Transaction Fee to offset the transaction cost to the Fund of buying those particular Deposit Securities. As noted in Amendment No. 2 to this filing, the Funds will impose a Transaction Fee on investors purchasing or redeeming Creation Units, the purpose of which is to protect the existing shareholders of the Funds from the dilutive effect of the transaction costs (primarily custodial costs) that the Funds incur when investors purchase or redeem Creation Units. In particular, if a Fund permits a purchaser to deposit cash in lieu of depositing one or more Deposit Securities, the purchaser will be assessed an appropriate Transaction Fee to offset the transaction cost to the Fund of buying those particular Deposit Securities. Local restrictions on transfers of securities to and between certain types of investors exist in certain countries (currently Greece, Taiwan, Korea, India and Brazil), which may restrict ''in kind'' creations and redemptions of Creation Units and therefore require that creation (or redemption) take place partly in cash and partly ''in kind.'' The Exchange will disclose this information in the Information Circular sent to members and member organizations about the Funds. It is expected that continuous sales and redemptions of the Funds that hold shares of companies in the relevant countries will result in their trading close to net asset values.

[27] The Exchange states that, in accordance with Vanguard's Code of Ethics and Inside Information Policy, personnel of the Adviser with knowledge about the composition of a Creation Deposit will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public.

[28] According to the Application, in certain instances, a Fund may require a purchasing investor to purchase a Creation Unit entirely for cash. For example, on days when a substantial rebalancing of a Fund's portfolio is required, the Adviser might prefer to receive cash rather than in-kind stocks so that it has liquid resources on hand to make the necessary purchases. The registration statement, however, states that the Funds have no current intention of issuing Creation Units for cash and would only do so in unusual circumstances.

[29] Orders to create or redeem VIPER Shares must be placed through an Authorized Participant, which is either (1) A broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation or (2) a DTC participant.

[30] *See supra* note 26.

[31] The Commission, however, would have concerns if the IIV was not an accurate reflection of the Fund's value and would expect the Exchange to evaluate the continued listing of such a product.

[32] There may be circumstances, however, where the Deposit and Redemption Securities could differ. For example, if ABC stock were replacing XYZ stock in a Fund's Target Index at the close of today's trading session, today's prescribed Deposit Securities might include ABC but not XYZ, while today's prescribed Redemption Securities might include XYZ but not ABC. According to the Application, having the flexibility to prescribe different baskets for creation and redemption promotes efficient portfolio management and

Continued

Depending on whether the NAV of a Creation Unit is higher or lower than the market value of the Redemption Securities, the redeemer of a Creation Unit will either receive from or pay to the Fund a cash amount equal to the difference.[33] The redeeming investor also must pay to the Fund the applicable Transaction Fee to cover transaction costs.[34]

A Fund has the right to make redemption payments in cash, in kind, or a combination of each, provided that the value of its redemption payments equals the NAV of the VIPER Shares tendered for redemption.[35] The Adviser currently contemplates that Creation Units of each Fund will be redeemed principally in kind, except in certain circumstances. A Fund may make redemptions partly or wholly in cash in lieu of transferring one or more Redemption Securities to a redeeming investor if the Fund determines, in its discretion, that such alternative is warranted due to unusual circumstances. This could happen if the redeeming investor is unable, by law or policy, to own a particular Redemption Security. For example, a foreign country's regulations may restrict or prohibit a redeeming investor from holding shares of a particular issuer located in that country.[36] The Adviser represents that it will adjust the Transaction Fee imposed on a redemption wholly or partly in cash to take into account any additional brokerage or other transaction costs incurred by the Fund.

In order to facilitate delivery of Redemption Securities, each redeeming Beneficial Owner or DTC participant acting on behalf of such Beneficial Owner must have arrangements with a broker-dealer, bank, or other custody provider in each jurisdiction in which any of the Redemption Securities are customarily traded. If neither the redeeming Beneficial Owner nor the Authorized Participant has such arrangements, and it is not otherwise possible to make other arrangements, the Fund may in its discretion redeem the VIPER Shares for cash.

G. Dividends

Dividends from net investment income will be declared and paid at least annually by each Fund in the same manner as other open-end investment companies. Distributions will generally occur in December.

The final dividend amount for each Fund, which is made available on *http://www.amextrader.com,* is the amount of dividends to be paid by a Fund for the appropriate period (usually annually). The final dividend amount is also disseminated by the Funds to Bloomberg and other sources.

The Funds intend to make available to Beneficial Owners of VIPER Shares the DTC book-entry dividend reinvestment service. Without this service, Beneficial Owners would have to take their distributions in cash. Information about the dividend reinvestment service will appear in each Fund's prospectus and in its Product Description.[37]

The cash proceeds of dividends and capital gain distributions payable to all Beneficial Owners participating in DTC's reinvestment service will be used to purchase additional VIPER Shares for such Beneficial Owners. These additional shares will be purchased on the secondary market. Some DTC participants may elect not to utilize the dividend reinvestment service. Beneficial Owners who hold VIPER Shares through these DTC participants may not be able to reinvest their dividends and distributions. These Beneficial Owners will receive their dividends and distributions in cash. The prospectus for VIPER Shares and the Product Description will disclose this fact.

H. Criteria for Initial and Continued Listing

Shares are subject to the criteria for initial and continued listing of Index Fund Shares in Amex Rule 1002A. A minimum of 100,000 VIPER Shares will be required to be outstanding for each Fund at the start of trading. This minimum number of Shares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares. The initial price of a VIPER Share for each Fund will be approximately $50 to $100 per share.

The Exchange believes that the proposed minimum number of VIPER Shares outstanding at the start of trading is sufficient to provide market liquidity.

I. Original and Annual Listing Fees

The fee applicable to the original listing of the Index Fund Shares on the Exchange is $5,000 for each Fund. In addition, the annual listing fee applicable to the VIPER Funds under Section 141 of Amex Company Guide (''Company Guide'') will be based upon the year-end aggregate number of outstanding VIPER Shares in all Vanguard funds listed on the Exchange.

J. Stop and Stop Limit Orders

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i–v). The Exchange has designated Index Fund Shares, including VIPER Shares, as eligible for this treatment.[38]

K. Amex Rule 190

Amex Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including VIPER Shares. Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market. However, a specialist's creation unit transaction may only be effected on the same terms and conditions as any other investor, and only at the NAV of the ETF shares.

L. Prospectus Delivery

The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations,

lowers the Fund's brokerage costs, and thus is in the best interests of the Fund's shareholders.

[33] In the typical situation where the Redemption Securities are the same as the Deposit Securities, this cash amount will be equal to the Balancing Amount described above in the creation process.

[34] Redemptions in which cash is substituted for one or more Redemption Securities will be assessed an appropriate Transaction Fee to offset the transaction cost to the fund of selling those particular Redemption Securities. *See supra* text accompanying note 26.

[35] In the event an Authorized Participant has submitted a redemption request in good order and is unable to transfer all or part of a Creation-Unit-size aggregation for redemption, a Fund may nonetheless accept the redemption request in reliance on the Authorized Participant's undertaking to deliver the missing VIPER Shares as soon as possible, which undertaking shall be secured by the Authorized Participant's delivery and maintenance of collateral. The Authorized Participant Agreement will permit the Fund to buy the missing VIPER Shares at any time and will subject the Authorized Participant to liability for any shortfall between the cost to the Fund of purchasing the VIPER Shares and the value of the collateral.

[36] *See supra* note 26.

[37] See *supra* note 23, and *infra* ''Prospectus Delivery.''

[38] *See* Securities Exchange Act Release No. 29063, (April 10, 1991), 56 FR 15652 (April 17, 1991) (File No. SR–Amex–90–31) note 9 (designating equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c)).

prior to commencement of trading, of the prospectus and Product Description delivery requirements that apply to the Funds. The Application requested, and the Exemptive Order granted, relief from Section 24(d) of the 1940 Act,[39] which relief permits dealers to sell VIPER Shares in the secondary market unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933.[40] Amex represents that any Product Description used in reliance on a Section 24(d) of the 1940 Act exemptive order will comply with all representations made therein and all conditions thereto.

M. Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including VIPER Shares. These factors would include, but are not limited to: (1) The extent to which trading is not occurring in stocks underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[41] In addition, trading in VIPER Shares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

N. Suitability

Prior to commencement of trading, the Exchange will issue an Information Circular informing members and member organizations of the characteristics of the Funds' VIPER Shares and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

O. Information Circular

In connection with the trading of the Funds, the Exchange will inform Exchange members and member organizations in an Information Circular of certain characteristics of certain Funds, as discussed below. 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 Funds are, how they are created and redeemed, the requirement that members and member firms deliver a prospectus or Product Description to investors purchasing shares of the Fund prior to or concurrently with the confirmation of a transaction, applicable Exchange rules, dissemination information, trading information and the applicability of suitability rules (including Amex Rule 411).[42] A Circular will also discuss exemptive, no-action and interpretive relief, if granted, by the Commission from Section 11(d)(1) and certain rules under the Act, including Rule 10a–1, Rule 10b–10, Rule 14e–5, Rule 10b–17, Rule 11d1–2, Rules 15c1–5 and 15c1–6, and Rules 101 and 102 of Regulation M under the Act.

If a Fund permits a purchaser to deposit cash in lieu of depositing one or more Deposit Securities, the purchaser will be assessed an appropriate Transaction Fee to offset the transaction cost to the Fund of buying those particular Deposit Securities. As noted in Amendment No. 2 to this filing, the Funds will impose a Transaction Fee on investors purchasing or redeeming Creation Units, the purpose of which is to protect the existing shareholders of the Funds from the dilutive effect of the transaction costs (primarily custodial costs) that the Funds incur when investors purchase or redeem Creation Units. In particular, if a Fund permits a purchaser to deposit cash in lieu of depositing one or more Deposit Securities, the purchaser will be assessed an appropriate Transaction Fee to offset the transaction cost to the Fund of buying those particular Deposit Securities.

Local restrictions on transfers of securities to and between certain types of investors exist in certain countries (currently Greece, Taiwan, Korea, India and Brazil), which may restrict ''in kind'' creations and redemptions of Creation Units and therefore require that creation (or redemption) take place partly in cash and partly ''in kind.'' In such cases, a Fund will charge creation and redemption fees intended to offset the transfer and other transaction costs incurred by the Fund, including market impact expenses (primarily associated with creation units for cash), related to investing in or disposing of the basket of securities held by the Fund.[43] For Funds that effect creations and/or redemptions in part or in whole for cash, it is possible that portfolio securities transactions in the relevant local markets for those Funds could affect the prices of those portfolio securities at the times those Funds' NAVs are calculated. The Exchange will disclose this information in the Information Circular sent to members and member organizations about the Funds.

The Information Circular will likewise disclose that the NAV for VIPER Funds will be calculated once daily as of 4 p.m. (Eastern Time) each day that the American Stock Exchange is open for trading.

P. Purchases and Redemptions in Creation Unit Size

In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of VIPER Shares in Creation Unit size are described in the Fund Prospectus and Statement of Additional Information, and that VIPER Shares are not individually redeemable but are redeemable only in Creation-Unit-size aggregations or multiples thereof.

Q. Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the VIPER Shares. Specifically, the Amex will rely on its existing surveillance procedures governing Index Fund Shares, which have been deemed adequate under the Exchange Act. In addition, the Exchange, Vanguard, and MSCI also have a general policy prohibiting the distribution of material, non-public information by their employees. Because MSCI is a broker-dealer that maintains the Indices, it is imperative that there exists a functional separation, such as a firewall, between the trading desk of the broker-dealer and the research persons responsible for maintaining the Indices. MSCI has represented that such a firewall exists.

R. Hours of Trading/ Minimum Price Variation

The Funds will trade on the Exchange until 4:15 p.m. (New York time) each business day. Shares of each Fund will trade with a minimum price variation of $0.01.

S. Dissemination of Intraday Indicative Value

To provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem VIPER Shares based on indices with non-U.S. components, as noted above, the Exchange will disseminate through the facilities of the CTA: (1) Continuously throughout the trading day the market

[39] 15 U.S.C. 80a–24(d).

[40] *See supra* note 11.

[41] *See* Amex Rule 918C.

[42] The Commission has issued an order granting the Funds relief from Section 24(d) of the 1940 Act, 15 U.S.C. 80a–24(d). *See* Investment Company Act Release No. 26281 (December 1, 2003). Any Product Description used in reliance on the Section 24(d) exemptive order will comply with all representations made and all conditions contained in the application for the order. *See supra* note 11.

[43] *See supra* note 26.

value of a VIPER Share;[44] and (2) every 15 seconds throughout the trading day a calculation of the estimated NAV (also known as the Intraday Indicative Value or ''IIV'')[45] of a VIPER Share as calculated by a third-party calculator (''IIV Calculator''). Comparing these two figures helps an investor to determine whether, and to what extent, VIPER Shares may be selling at a premium or a discount to NAV.

The IIV Calculator will calculate the IIV of a VIPER Share as follows. First, it will establish the market value of a Creation Deposit based on the previous night's closing price of each Deposit Security plus the previous night's Balancing Amount. Then, throughout the day at 15-second intervals, it will recalculate the market value of a Creation Deposit based on the then-current market price of each Deposit Security plus the previous night's Balancing Amount. As the respective international local markets close, the market valuation of the Creation Deposit will continue to be updated for foreign exchange rates for the remainder of the U.S. trading day at the prescribed 15-second interval. The valuations of the Creation Deposit throughout the day will be compared against the previous night's value to determine the percentage change in the value of the Creation Deposit. This percentage will then be applied against the previous night's closing NAV to estimate the current NAV of a VIPER Share.

The IIV may not reflect the value of all securities included in the applicable index. In addition, the IIV does not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. Therefore, the IIV on a per-VIPER-Share basis disseminated during Amex trading hours should not be viewed as a real-time update of the NAV of a particular Fund, which is calculated only once a day. While the IIV that will be disseminated by Amex at the start of the trading day is expected to be generally close to the most recently calculated Fund NAV on a per-VIPER-Share basis, it is possible that the value of the portfolio of securities held by a Fund may diverge from the value of the Deposit Securities during any trading day. In such case, the IIV will not precisely reflect the value of the Fund portfolio.

Amex states, however, that during the trading day, while the relevant foreign markets are open for trading, the IIV of a Fund's VIPER Shares can be expected to closely approximate the value per VIPER Share of the portfolio of securities for each Fund except under unusual circumstances (*e.g.*, in the case of extensive rebalancing of multiple securities in a Fund at the same time by the Adviser). The Exchange further states that the circumstances that might cause the IIV of a Fund's VIPER Shares to be based on calculations different from the valuation per VIPER Share of the actual portfolio of a Fund would not be different than circumstances causing any index fund or trust to diverge from an underlying benchmark index.

The Exchange believes that dissemination of the IIV based on the Deposit Securities provides additional information regarding each Fund that would not otherwise be available to the public and is useful to professionals and investors in connection with VIPER Shares trading on the Exchange or the creation or redemption of VIPER Shares.

MSCI Pacific Index:

For the MSCI Pacific Index, there is no overlap in trading hours between the foreign markets and Amex. Therefore, for these VIPER Shares, the IIV Calculator will utilize closing prices (in the applicable foreign currency) in the principal foreign market for securities in the Fund's portfolio and convert the price to U.S. dollars. Those values will be updated every 15 seconds during Amex trading hours to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency. The IIV will also include the applicable estimated cash component for the Fund.

MSCI Europe Index and Select Emerging Markets Index:

For the MSCI Europe Index and the Select Emerging Markets Index, both of which include companies trading in markets with trading hours overlapping regular Amex trading hours, the IIV Calculator will update the applicable IIV every 15 seconds to reflect price changes in the principal foreign market and convert such price into U.S. dollars based on the current currency exchange rate. When the foreign market is closed but Amex is open, the IIV will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign market closes. The IIV will also include the applicable estimated cash component for each Fund.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act[46] in general, and furthers the objectives of Section 6(b)(5)[47] 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 regulating, clearing settling, processing information with respect to, and facilitating transactions in securities; and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any 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 were solicited or received with respect to the proposed rule change.

III. 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–2004–05 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–2004–05. 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

[44] The consolidated tape will show the market price of VIPER Shares only; it will not show the price (*i.e.*, the NAV) of Conventional Shares.

[45] The Application refers to the IIV as the ''estimated NAV.'' The IIV is also referred to by other issuers as an ''Underlying Trading Value,'' ''Indicative Optimized Portfolio Value (IOPV),'' and ''Intraday Value'' in various places such as the Prospectus and marketing materials for different exchange-traded funds.

[46] 15 U.S.C. 78f(b).

[47] 15 U.S.C. 78f(b)(5).

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–Amex–2004–05 and should be submitted on or before September 10, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder, applicable to a national securities exchange.[48] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [49] and will promote just and equitable principles of trade, and facilitate transactions in securities, and, in general, protect investors and the public interest.[50]

The Commission believes that the new VIPER Shares will provide investors with an additional investment choice. Specifically, the proposal to list and trade the proposed Vanguard Funds will provide investors with a convenient and less expensive means of participating in the foreign securities markets. The Commission believes that Amex's proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell single securities at negotiated prices throughout the business day that generally track the price and yield performance of the respective underlying MSCI Indices.[51]

Furthermore, the proposed rule change raises no issues that have not been previously considered by the Commission in connection with earlier filings for Index Fund Shares pursuant to Rule 19b–4 under the Exchange Act.[52] The VIPER Shares to be issued by the Vanguard International Equity Funds are similar in structure and operation to exchange-traded index fund shares that the Commission has previously approved for listing and trading on national exchanges under Section 19(b)(2) of the Exchange Act.[53] The stocks included in the Target Indices are among the stocks with the highest liquidity and market capitalization in their respective countries. In particular, with respect to each of the following key issues, the Commission believes that the VIPER Shares satisfy established standards.

A. Fund Characteristics

Similar to other previously-approved, exchange-listed index fund shares, the Commission believes that the proposed VIPER Shares will provide investors with an alternative to trading a broad range of securities on an individual basis and will give investors the ability to trade a product representing an interest in a portfolio of securities designed to reflect substantially the applicable Target Index. The estimated cost of individual VIPER Shares, approximately $50 to $100, should make them attractive to individual retail investors who wish to hold a security representing the performance of a portfolio of stocks. In addition, unlike the case with standard open-end investment companies specializing in such stocks, investors will be able to trade each of the VIPER Share Funds continuously throughout the business day in secondary market transactions at negotiated prices.[54] Accordingly, the proposed Funds will allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transaction costs for trading a portfolio of securities.

The Commission believes that each of the proposed Funds are reasonably designed to provide investors with an investment vehicle that substantially reflects in value the applicable Target Index and, in turn, the performance of: (1) The component securities comprising the MSCI Europe Index; [55] (2) the component securities comprising the MSCI Pacific Index; [56] and (3) the Select Emerging Markets Index.[57] Moreover, the Commission finds that, although the value of the VIPER Shares will be derived from and based on the value of the securities and cash held in the Fund, VIPER Shares are not leveraged instruments. Accordingly, the level of risk involved in the purchase or sale of VIPER Shares is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for the VIPER Shares is based on a portfolio of securities. The Commission notes that each fund will invest at least 90% of its assets in the component securities of its respective Target Index. As noted above, each Fund will use a representative portfolio sampling strategy to attempt to track its Underlying Index. Although a representative sampling strategy entails some risk of tracking error, the Advisor

[48] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[49] 15 U.S.C. 78f(b)(5).

[50] Pursuant to Section 6(b)(5) of the Exchange Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[51] The Commission notes that, as is the case with similar previously approved exchange traded funds, investors in VIPER Shares can redeem in Creation Unit size aggregations only. *See, e.g.,* Securities Exchange Act Release No. 44990 (October 25, 2001), 66 FR 56869 (November 13, 2001) (File No. SR–Amex–2001–45).

[52] 17 CFR 240.19b–4.

[53] 15 U.S.C. 78s(b)(2).

[54] Because of the potential arbitrage opportunities, the Commission believes that VIPER Shares will not trade at a material discount or premium in relation to their NAV.

[55] The MSCI Europe Index comprises 16 of the 50 countries for which MSCI has indices. The MSCI Europe Index is a free float-adjusted market capitalization weighted index that is designed to measure developed market equity performance in Europe. As of December 2003, the Index contained 539 components with a total market capitalization exceeding $5 trillion.

[56] The MSCI Pacific Index comprises five of the 50 countries for which MSCI has indices. The MSCI Pacific Index is a free float-adjusted market capitalization weighted index that is designed to measure equity market performance in the Pacific region. As of December 31, 2003, the Index contained 466 components with a total market capitalization exceeding $2 trillion.

[57] The Select Emerging Markets Index is comprised of securities included in the following standard MSCI Country Indices: Argentina, Brazil, Chile, China, Czech Republic, Hungary, India, Indonesia, Israel, Korea, Mexico, Peru, Philippines, Poland, South Africa, Taiwan, Thailand and Turkey. The weight of each country in the index is reviewed on a monthly basis. After the calculation of the last business day of the month, MSCI reviews the weight of each country in the index. If the weight of a country is above 20%, the initial weight of this country for the calculation of the first business day of the month is set to 20% and the excess amount is distributed among the other constituents based on their respective weights. The weight of the countries in the index will then fluctuate according to market movements until the end of the month when the monthly monitoring is performed once again. As of December 31, 2003, the Index contained 533 components with a total market capitalization exceeding $740 billion.

will seek to minimize tracking error. It is expected that each Fund will have a tracking error relative to the performance of its Underlying Index of no more than 5%.

The Advisers to each Fund may attempt to reduce tracking error by using a variety of investment instruments, including futures contracts, repurchase agreements, options, swaps and currency exchange contracts; however, these instruments will not constitute more than 10% of the Funds' assets.[58] The Exchange represents, however, that none of the Funds will use these instruments to leverage, or borrow against, its securities holdings or for speculative purposes. Also, the Exchange represents that each Fund does not intend to concentrate in any particular industry except to the extent that its Underlying Index concentrates in the stocks of a particular industry or industries. As described above the MSCI Indices are regional indices that MSCI may adjust based on annual full country indeed reviews, quarterly index reviews, and ongoing event-related changes. Changes to the indices are made public via print and electronic media, and, in particular, through press releases on the MSCI Web site. MSCI aims to target a free float-adjusted market representation of 85% within each country's industry group and uses GICS industry classifications.

The market capitalization and liquidity of the Fund components is such that an adequate level of liquidity exists to allow for the maintenance of fair and orderly markets. Also the Fund components will not be highly concentrated such that the Funds become surrogates for trading unregistered foreign securities on the Exchange.

While the Commission believes that these requirements should help to reduce concerns that the Funds could become a surrogate for trading in a single or a few unregistered stocks, in the event that a Fund were to become such a surrogate, or if the Funds' characteristics changed significantly from the characteristics described herein,[59] the Funds would not be in compliance with the listing and trading standards approved herein, and the Commission would expect the Amex to file a proposed rule change pursuant to Rule 19b–4 of the Exchange Act if a Fund's Target Index. Accordingly, the level of risk involved in the purchase or sale of VIPER Shares is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for the VIPER Shares is based on a portfolio of securities.

B. Disclosure

The Commission believes that Amex's proposal should provide for adequate disclosure to investors relating to the terms, characteristics, and risks of trading the Funds. The Exchange will circulate an information circular detailing applicable prospectus and product description delivery requirements. Because the VIPER Shares have been granted relief from the prospectus delivery requirements of the 1940 Act, they will be subject to Amex Rule 1000A, which requires delivery of a product description describing the Funds. Pursuant to the rule, the delivery requirement will extend to a member or member organization carrying an omnibus account for a non-member broker-dealer, who must notify the non-member to make the product description available to its customers on the same terms as are directly applicable to members and member organizations. In addition, Rule 1000A requires that a member or member organization must deliver a prospectus to a customer upon request.

The circular also will address members' responsibility to deliver a prospectus or product description to all investors and highlight the characteristics of the Funds. The circular will also remind members of their suitability obligations.[60] For example, the information circular will also inform members and member organizations that VIPER Shares are not individually redeemable, but are redeemable only in Creation-Unit-size aggregations as set forth in each Fund prospectus and statement of additional information and that local restrictions may cause certain funds to effect creations and redemptions for cash.[61]

C. Dissemination of Fund Information

With respect to pricing, the Exchange will disseminate the recent NAV for each Fund on the Exchange Web site amextrader.com.[62] As indicated above, each Fund's NAV will be calculated once daily as of 4 p.m.

The Exchange states that the value of each Fund's Target Index is now and will be disseminated intra-day at regular intervals (every 60 seconds) as individual Component Securities change in price. These intra-day values based on the sale reporting in the foreign market of the Target Indices will be disseminated real time throughout the foreign market trading day by organizations authorized by MSCI, including, by subscription, from quote vendors such as Bloomberg, Dow Jones Markets, DRI/McGraw Hill, Lipper Analytical, Quick, Quotron, Reuters, and Telekurs. In addition, these organizations will disseminate values for each Target Index once each trading day, based on closing prices in the relevant exchange market.

Amex will also disseminate by means of Consolidated Tape Association (''CTA'') and CQ High Speed Lines each Fund's IIV at 15-second intervals and the market value of its VIPER Shares. The Commission believes that comparing these two figures will help an investor to determine whether, and to what extent, VIPER Shares may be selling at a premium or a discount to NAV.

Amex will also make available additional information about each Fund, including shares outstanding, daily trading volume, share closing price, estimated cash amount and total cash amount per Creation Unit, and final dividend amounts to be paid for each Fund.[63] The Commission believes that dissemination of this information will facilitate transparency with respect to the proposed VIPER Shares and

[58] Each of these Funds will invest not more than 10% of fund assets in ADRs that are not included in component securities of their Target Index. To the extent that these Funds invest more than 10% of their assets in ADRs, these ADRs shall be listed on a national securities exchange or quoted on the Nasdaq NMS. Because the Target Indices do not currently contain ADRs, the Commission would consider a significant investment by the Funds in ADRs to be a material change necessitating review of these listing standards.

[59] For example, if the Fund substitutes a different index in the Target Index that the Fund currently tracks, the Exchange has committed to file a Form 19b–4.

[60] Amex Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, order or account accepted. Telephone conversation between Marija Willen, Associate General Counsel, Amex, and Brian Trackman, Attorney, Division, Commission, on May 26, 2004.

[61] *See* Footnote 26, *supra.* The information circular should also discuss exemptive relief granted by the Commission from certain rules under the Act. The applicable rules are: Rule 10a–1; Rule 10b–10; Rule 14e–5; Rule 10b–17; Rule 11d1–2; Rules 15c1–5 and 15c1–6; and Rule 101 and 102 of Regulation M under the Act.

[62] The Exchange will post additional information about each Fund, including dividend amounts to be paid as well. Local restrictions on transfers of securities currently in Greece, Taiwan, Korea, India, and Brazil may cause the Fund to do cash creations and redemptions of Creation Units to track efficiently the Target Index. To the extent that the Fund substitutes a new index that contain such restrictions, the Commission notes that the Exchange has committed to file a Form 19b–4.

[63] The Commission believes that the closing prices of Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources in the relevant country, or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services.

diminish the risk of manipulation or unfair informational advantage.

In addition, the Commission notes that Vanguard's Web site is and will be publicly accessible at no charge, and will contain each fund's NAV as of the prior business day, the Bid-Asked Price,[64] and a calculation of the premium or discount of the Bid-Asked Price in relation to the closing NAV. Additional information available to investors will include data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's VIPER Shares traded at a premium or discount to NAV based on the Bid-Asked Price and closing NAV, and the magnitude of such premiums and discounts; the Fund's Prospectus and two most recent reports to shareholders; and other quantitative information such as daily trading volume.[65]

Based on the representations made in the Amex proposal, the Commission believes that pricing and other important information about each Fund is adequate, given the Funds' foreign components.

D. Listing and Trading

The Commission finds that adequate rules and procedures exist to govern the listing and trading of VIPER Shares. VIPER Shares will be deemed equity securities subject to Amex rules governing the trading of equity securities, including, among others, rules governing trading halts,[66] responsibilities of the specialist, account opening and customer suitability requirements,[67] and the election of stop and stop limit orders.

In addition, the Funds will be subject to Amex listing and delisting/suspension rules and procedures governing the trading of Index Fund Shares on the Amex.[68] As the Commission has noted previously,[69] the listing and delisting criteria for VIPER Shares should help to ensure that a minimum level of liquidity will exist in each of the Funds to allow for the maintenance of fair and orderly markets. Accordingly, the Commission believes that the rules governing the trading of VIPER Shares provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

As noted above, the Amex expects to require that a minimum of two Creation Units (100,000 VIPER Shares) for each Fund to be outstanding at the start of trading. The Commission believes that this minimum number is sufficient to help to ensure that a minimum level of liquidity will exist at the start of trading.[70]

E. Surveillance

The Commission finds that Amex has adequate surveillance procedures to monitor the trading of the proposed VIPER Shares, including concerns with specialists purchasing and redeeming Creation Units. The Amex represents that it will rely on existing surveillance procedures governing Index Fund Shares. In addition, the Exchange, Vanguard,[71] and MSCI have a general policy prohibiting the distribution of material, non-public information by its employees. Further, based on MSCI's representation, the Commission finds that an adequate functional barrier exists between the trading desk of the broker-dealer and the research persons responsible for maintaining the Indices.

F. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[72] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the proposal is consistent with the listing and trading standards in Amex Rule 1000A *et seq.* (Index Fund Shares), and the Commission has previously approved similar products based on foreign indices.[73] The Commission does not believe that the proposed rule change, as amended, raises novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from the flexibility afforded by trading these products as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[74] to approve the proposal on an accelerated basis.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as amended (SR–Amex–2004–05), is hereby approved on an accelerated basis.[75]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[76]

Margaret H. McFarland,

Deputy Secretary.

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[64] According to the Application, because the NAV for all share classes of all Vanguard funds is calculated as of the close of the NYSE (usually 4 p.m.), but the market for VIPER Shares and other exchange traded funds does not close until 4:15 p.m., the closing market price is not measured at the same time as NAV. This difference in timing could lead to discrepancies between performance based on NAV and performance based on market price that give investors an inaccurate picture of the correlation between the two figures. To remedy this problem, the Funds compare performance of a Fund's VIPER Shares based on NAV to performance of the VIPER Shares based on the mid-point of the bid-asked spread at the time NAV is calculated. By calculating market-based and NAV-based performance at the same time, the two performance figures will be comparable, and any differences will be attributable to market forces rather than timing differences.

[65] *See supra* text accompanying notes 22–23.

[66] In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including VIPER Shares. These factors would include, but are not limited to: (1) The extent to which trading is not occurring in stocks underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in VIPER Shares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

[67] Prior to commencement of trading, the Exchange states that it will issue an Information Circular informing members and member organizations of the characteristics of the Funds' VIPER Shares and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

[68] *See* Amex Rule 1002A.

[69] *See, e.g.,* Securities Exchange Act Release Nos. 44990 (October 25, 2001), 66 FR 56869 (November 13, 2001) (File No. SR–Amex–2001–45); and 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (File No. SR–Amex–95–43).

[70] This minimum number of shares required to be outstanding at the start of trading is comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares.

[71] Vanguard has represented that sufficient information barriers exist between the Advisor and other affiliated Vanguard entities to prevent misuse of non-public information.

[72] 15 U.S.C. 78s(b)(2).

[73] *See, e.g.,* Securities Exchange Act Release Nos. 44990 (October 25, 2001), 66 FR 56869 (November 13, 2001) (File No. SR–Amex–2001–45); 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000); and 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (File No. SR–Amex–95–43).

[74] 15 U.S.C. 78s(b)(5).

[75] 15 U.S.C. 78s(b)(2).

[76] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50193; File No. SR–BSE–2004–35]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate the Requirement That Certain Market Makers on the Boston Options Exchange Facility With No Public Accounts and Who Do Not Solicit Public Accounts, Maintain Certain Information Barriers

August 13, 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 August 12, 2004, the Boston Stock Exchange, Inc. (''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 the BSE. The Exchange filed this proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] 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 BSE proposes to eliminate the Information Barrier requirement set forth in the Boston Options Exchange Facility (''BOX'') Rules Chapter VI, Section 10 in the limited circumstances where a Market Maker, which also functions as an Order Flow Provider,[6] engages solely in proprietary trading and does not, under any circumstance, maintain customer accounts or solicit or accept orders from or on behalf of public customers. The text of the proposed rule change is below. Proposed additions are in italics.

* * * * *

Chapter VI Market Makers

Sec. 10 Limitations on Dealings

(a) General Rule. A Market Maker on BOX may engage in Other Business Activities, or it may be affiliated with a broker-dealer that engages in Other Business Activities, only if there is an Information Barrier between the market making activities and the Other Business Activities. ''Other Business Activities'' means:

i. Conducting an investment banking or public securities business;

ii. Making markets in the stocks underlying the options in which it makes markets; or

iii. Functioning as an Order Flow Provider*, except where such Market Maker, or a broker-dealer with which such Market Maker is affiliated: (A) engages solely in proprietary trading and does not, under any circumstance, maintain customer accounts or solicit or accept orders or funds from or on behalf of public customers, including broker-dealers and other securities firms, and (B) does not place or accept directed orders or utilize any other order types which call for the participation of, or interaction with, public customers, including broker-dealers and other securities firms.*

* * * * *

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 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. The Exchange 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 Information Barrier requirements set forth in Chapter VI, Section 10 of the BOX Rules, provide critical safeguards to prevent the use or communication of material non-public information by market making firms (and affiliated broker-dealers) to inappropriately benefit other business activities in which they may engage, such as investment banking or equities market making. Such information could relate to, for example, the Market Maker's customer and directed order flow or other information obtained by the Market Maker in the course of its business. Such barriers help to ensure that market making firms do not illegally take advantage of or communicate such information to benefit their other business activities, to the detriment of investors, customers, issuers and the integrity of the market.

For business reasons, certain registered Market Makers, or broker-dealers with which such Market Makers are affiliated, engage solely in proprietary trading. Accordingly, such firms do not maintain public customer accounts or solicit or accept orders or funds (and hence, would not accept directed order flow) from or on behalf of public customers, including broker-dealers and other securities firms. Under such circumstances, because the market making firm does not engage in any other business activities that may benefit from information obtained by the Market Maker in the course of the firm's market making activities, the Exchange believes that the concerns noted above which form the basis for the Information Barrier requirements set forth in Chapter VI, Section 10 of the BOX Rules do not apply.[7] Nevertheless, Chapter VI, Section 10 of the BOX Rules would require such a firm to develop and implement Information Barriers.

Under such circumstances, the Exchange believes that an Information Barrier requirement is unnecessary and would impose an undue burden on the market making firm. Accordingly, this proposed rule change eliminates this requirement in the limited circumstances where a market making firm and its affiliated broker-dealer do not maintain public customer accounts, nor solicit or accept public customer orders, including from broker-dealers and other securities firms (and does not accept directed order flow or utilize any order type which presupposes the participation of public customers), and engage solely in proprietary trading. The Exchange believes that this limited modification is consistent with the purposes of the rule. However, if the market making firm or its affiliated broker-dealer subsequently decides to maintain public customer accounts or solicit public customer accounts (and directed order flow or order types which presuppose the participation of public customers), then the requirements of Chapter VI, Section 10 of the BOX Rules would apply. Further, this limited

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–(f)(6).

[5] The BSE provided the Commission with notice of its intention to file the proposed rule change on July 6, 2004. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Chapter I, Section 1(a)(46) of the BOX Rules (definition of ''Order Flow Provider'').

[7] The proposed rule change is designed to accommodate the needs of these Market Makers. The current rule did not foresee the business conditions that currently exist which necessitate this change.

modification would not alter or adjust any other obligation imposed on Market Makers, including those set forth in Chapter VI, Section 5 of the BOX Rules (Obligations of Market Makers).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the 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–BSE–2004–35 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–BSE–2004–35. 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 20549–0609. 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–2004–35 and should be submitted on or before September 10, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50197; File No. SR–ISE–2004–18]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto To Amend the Market Maker Information Barrier Requirements Under ISE Rule 810

August 13, 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 26, 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, II, and III below, which Items have been prepared by the Exchange. The Exchange amended the proposal on August 6, 2004,[3] and August 13, 2004.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to replace the defined term ''Chinese Wall'' with the defined term, ''Information Barrier'' in ISE Rule 810. The Exchange also proposes to amend ISE Rule 810 to eliminate the requirement that a market maker maintain an Information Barrier in the limited circumstances where (i) a market maker, or broker-dealer affiliated with such market maker, engages solely in proprietary trading and does not, under any circumstances, maintain customer accounts or solicit orders or funds from or on behalf of Public Customers[5] or broker-dealers; and (ii) the sole extent to which such market maker, or broker-dealer affiliated with such market maker, handles listed options orders as agent on behalf of Public Customers or broker-dealers consists of handling such orders

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On August 6, 2004, the Exchange filed a Form 19b–4, which replaced the original filing in its entirety (''Amendment No. 1'').

[4] On August 13, 2004, the Exchange filed a Form 19b–4, which replaced the original filing and Amendment No. 1 in their entirety (''Amendment No. 2'').

[5] ISE Rule 100(a)(32) defines ''Public Customer'' as ''a person that is not a broker-dealer in securities.'' ISE Rule 100(a)(33) defines ''Public Customer Order'' as ''an order for the account of a Public Customer.''

pursuant to an exchange sponsored Directed Order Program. Additionally, the Exchange proposes to make a non-substantive clarification and certain non-substantive technical changes to ISE Rule 810(a)(3).

The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

Rule 810. Limitations on Dealings

(a) General Rule. A market maker on the Exchange may engage in Other Business Activities, or it may be affiliated with a broker-dealer that engages in Other Business Activities, only if there is an *Information Barrier* [Chinese Wall] between the market making activities and the Other Business Activities. ''Other Business Activities'' means:

(1) Conducting an investment or banking or public securities business;

(2) Making markets in the stocks underlying the options in which it makes markets; or

(3) [Functioning as an Electronic Access Member] *handling listed options orders as agent on behalf of Public Customers or broker-dealers;*

(4) Conducting non-market making proprietary listed options trading activities.

(b) *Information Barrier* [Chinese Wall]. For the purposes of this rule, an *Information Barrier* [Chinese Wall] is an organizational structure in which:

(1) The market making functions are conducted in a physical location separate from the locations in which the Other Business Activities are conducted, in a manner that effectively impedes the free flow of communications between DTRs and persons conducting the Other Business Activities. However, upon request and not on his own initiative, a DTR performing the function of a market maker may furnish to a person performing the function of an Electronic Access Member or other persons at the same firm or an affiliated firm (''affiliated persons''), the same sort of market information that the DTR would make available in the normal course of its market making activity to any other person. The DTR must provide such information to affiliated persons in the same manner that he would make such information available to a non-affiliated person.

(2) There are procedures implemented to prevent the use of material non-public corporate or market information in the possession of persons on one side of the *barrier* [wall] from influencing the conduct of persons on the other side of the *barrier* [wall]. These procedures, at a minimum, must provide that:

(i) The DTR performing the function of a market maker does not take advantage of knowledge of pending transactions, order flow information, corporate information or recommendations arising from the Other Business Activities; and

(ii) All information pertaining to the market maker's positions and trading activities is kept confidential and not made available to persons on the other side of the *Information Barrier* [Chinese Wall].

(3) Persons on one side of the *barrier* [wall] may not exercise influence or control over persons on the other side of the *barrier* [wall], provided that:

(i) The market making function and the Other Business Activities may be under common management as long as any general management oversight does not conflict with or compromise the market maker's responsibilities under the Rules of the Exchange; and

(ii) The same person or persons (the ''Supervisor'') may be responsible for the supervision of the market making and Electronic Access Member functions of the same firm or affiliated firms in order to monitor the overall risk exposure of the firm or affiliated firms. While the Supervisor may establish general trading parameters with respect to both market making and other proprietary trading other than on an order-specific basis, the Supervisor may not:

(A) Actually perform the function either of market maker or Electronic Access Member;

(B) Provide to any person performing the function of an Electronic Access Member any information relating to market making activity beyond the information that a DTR performing the function of a Primary Market Maker may provide under subparagraph (b)(1), above; nor

(C) Provide a DTR performing the function of market maker with specific information regarding the firm's pending transactions or order flow arising out of its Electronic Access Member activities.

(c) Documenting and Reporting of *Information Barrier* [Chinese Wall] Procedures. A Member implementing an *Information Barrier* [Chinese Wall] pursuant to this Rule shall submit to the Exchange a written statement setting forth:

(1) The manner in which it intends to satisfy the conditions in paragraph (b) of this Rule, and the compliance and audit procedures it proposes to implement to ensure that the *Information Barrier* [Chinese Wall] is maintained;

(2) The names and titles of the person or persons responsible for maintenance and surveillance of the procedures;

(3) A commitment to provide the Exchange with such information and reports as the Exchange may request relating to its transactions;

(4) A commitment to take appropriate remedial action against any person violating this Rule or the Member's internal compliance and audit procedures adopted pursuant to subparagraph (c)(1) of this Rule, and that it recognizes that the Exchange may take appropriate remedial action, including (without limitation) reallocation of securities in which it serves as a market maker, in the event of such a violation;

(5) Whether the Member or an affiliate intends to clear its proprietary trades and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the Member's *Information Barrier* [Chinese Wall], which procedures, at a minimum, must be the same as those used by the Member or the affiliate to clear for unaffiliated third parties; and

(6) That it recognizes that any trading by a person while in possession of material, non-public information received as a result of the breach of the internal controls required under this Rule may be a violation of Rules 10b–5 and 14e–3 under the Exchange Act or one or more other provisions of the Exchange Act, the rules thereunder or the Rules of the Exchange, and that the Exchange intends to review carefully any such trading of which it becomes aware to determine whether a violation has occurred.

(d) Exchange Approval of *Information Barrier* [Chinese Wall] Procedures. The written statement required by paragraph (c) of this Rule must detail the internal controls that the Member will implement to satisfy each of the conditions stated in that Rule, and the compliance and audit procedures proposed to implement and ensure that the controls are maintained. If the Exchange determines that the organizational structure and the compliance and audit procedures proposed by the Member are acceptable under this Rule, the Exchange shall so inform the Member, in writing. Absent the Exchange finding a Member's *Information Barrier* [Chinese Wall] procedures acceptable, a market maker may not conduct Other Business Activities.

(e) Clearing Arrangements. Subparagraph (c)(5) permits a Member or an affiliate of the Member to clear the Member's market maker transactions if

it establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the *Information Barrier* [Chinese Wall]. In this regard:

(1) The procedures must provide that any information pertaining to market maker securities positions and trading activities, and information derived from any clearing and margin financing arrangements, may be made available only to those employees (other than employees actually performing clearing and margin functions) specifically authorized under this Rule to have access to such information or to other employees in senior management positions who are involved in exercising general managerial oversight with respect to the market making activity.

(2) Any margin financing arrangements must be sufficiently flexible so as not to limit the ability of any market maker to meet market making or other obligations under the Exchange's Rules.

(f) Exceptions to the *Information Barrier* [Chinese Wall] Requirement.

(1) A market maker shall be exempt from paragraph (a)(3) of this Rule to the extent the market maker complies with the following conditions:

(A)[(1)] such Member [functions as an Electronic Access Member] *handles orders as agent only for the account of entities that are affiliated with the Member and* solely in options classes [(i)] contained in Groups to which the Member is not appointed as a market maker pursuant to Rule 802 or [(ii)] in which the Member is prohibited from acting as a market maker pursuant to regulatory requirements; [and] *or*

[(2) The Member enters orders as an Electronic Access Member only for (i) the proprietary account of the Member; or (ii) the account of entities that are affiliated with the Member.]

(B) Such market maker handles orders as agent solely with respect to a Directed Order Program, as defined in Supplementary Material .01 below.

(2) A market maker shall be exempt from paragraph (a)(4) of this Rule to the extent the Member, or a broker-dealer with which such Member is affiliated:

(A) Engages solely in proprietary trading and does not, under any circumstances, maintain customer accounts or solicit or accept orders or funds from or on behalf of Public Customers or broker-dealers; and

(B) Does not participate in any Directed Order Programs, as defined in Supplementary Material .01 below, or utilize any other order types which call for the participation of, or interaction with, Public Customers or broker-dealers.

Supplementary Material to Rule 810

.01 For purposes of paragraph (f)(1)(B) and (f)(2)(B) of Rule 810 only, a Directed Order Program means rules of an options exchange that (1) permit an options market maker to handle orders directed to it anonymously through an exchange system; (2) require the market maker to accept directed orders from all sources eligible to direct orders using such exchange system; and (3) require the options market maker to execute such directed orders on such exchange under specified order handling procedures. A Directed Order Program shall not include any rules of an exchange that permit a market maker to accept orders directly, without being routed through an exchange system, from customers or another broker-dealer, nor any rules or system that allows a market maker to handle orders on a disclosed or discretionary basis.

* * * * *

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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to replace the defined term ''Chinese Wall'' with the defined term ''Information Barrier'' in ISE Rule 810. The Exchange does not, however, propose to change the definition or meaning of the defined term. Under ISE Rule 810, a member must maintain an Information Barrier between its ISE market making operations and ''Other Business Activities.'' Other Business Activities are defined as (i) conducting an investment or banking or public securities business; (ii) making markets in the stocks underlying the options in which it makes markets; or (iii) functioning as an Electronic Access Member (''EAM'').[6] Requiring an Information Barrier between Other Business Activities and a member's market making activities assures that market makers compete on equal terms. Of particular importance is separating EAM and market making activity, as this assures that market makers do not use information regarding pending orders to their advantage.

To comply with the Information Barrier requirement, a Member must physically locate its market making personnel separately from personnel conducting Other Business Activities. This means that the same person at a firm may not engage in ISE market making activities while also handling agency orders or trading for the firm's non-market making options proprietary account. ISE Rule 810 currently contains a narrow exemption to the Information Barrier requirement that allows a firm to place orders in options for which they are not making markets on the ISE, so long as such orders are proprietary orders (that is, not customer orders) or orders for an affiliate. ISE Rule 810 does not require that a member separate its ISE market making activities from its options market making activities that occur on other options exchanges.

With the instant proposed rule change, the Exchange proposes two additional exemptions from the Information Barrier requirement:

Proprietary Options Trading: Certain market makers, or broker-dealers with whom such market makers are affiliated, engage solely in proprietary trading. Accordingly, such firms do not maintain customer accounts and do not solicit or accept orders from or on behalf of Public Customers or broker-dealers. As a result, the ISE believes that the market maker would not have access to non-public order flow information that might improperly influence its market making trading activities. Under these circumstances, the Exchange believes requiring an Information Barrier between the firm's market making and proprietary trading activity places an unnecessary burden on the member.[7]

Directed Order Programs: The Exchange also proposes to amend ISE Rule 810 to allow a market maker to handle orders as agent according to the rules of ''Directed Orders Programs.''[8] Allowable Directed Order Programs are

[6] *See* ISE Rule 810(a).

[7] The ISE believes that this section of its proposal is similar to a proposed rule change by the Pacific Exchange, Inc. that was approved by the Commission. *See* Securities Exchange Act Release No. 49264 (February 17, 2004), 69 FR 8510 (February 24, 2004) (SR–PCX–2003–49).

[8] ISE has proposed to define ''Directed Order Program'' under proposed Supplementary Material .01 to ISE Rule 810.

narrowly defined rules of an options exchange that (1) permit an options market maker to handle orders directed to it anonymously through an exchange system; (2) require the market maker to accept directed orders from all sources eligible to direct orders using such exchange system; and (3) require the options market maker to execute such directed orders on such exchange under specified order handling procedures. A Directed Order Program specifically does not include any rules of an exchange that permit a market maker to accept orders directly, without being routed through an exchange system, from customers or another broker-dealer, nor any rules or system that allows a market maker to handle orders on a disclosed or discretionary basis. Such narrowly defined Directed Order Programs themselves contain rules designed to ensure that market makers do not gain an informational advantage in handling agency orders. The Exchange believes that this change is necessary to clarify that an ISE market maker need not have an Information Barrier between its ISE market making operations and options market making operations on other exchanges by virtue of their participation in a Directed Order Program, such as that currently approved for the Boston Options Exchange (''BOX''), a facility of the Boston Stock Exchange, Inc.[9] The Exchange believes that requiring an Information Barrier in this situation would be unnecessarily burdensome to its Members because they are given little discretion in handling orders under these Commission approved Directed Order Programs.

The Exchange also proposes to clarify the definition of ''Other Business Activities'' under ISE Rule 810(a). Currently, the definition includes ''functioning as an Electronic Access Member.'' The use of this term in ISE Rule 810(a) has caused confusion among its members. Therefore, the Exchange proposes to specify that Other Business Activities include: (i) handling listed options orders as agent on behalf of Public Customers or broker-dealers, and (ii) conducting non-market making proprietary listed options trading activities. The Exchange believes that this proposed change is consistent with the interpretation that has been applied by the Exchange since adoption of ISE Rule 810.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change, as amended, is the requirement under section 6(b)(5) of the Act[10] that the Exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes the proposal would remove an unnecessary burden on its members to maintain information barriers in narrow circumstances where the Exchange believes there is no regulatory need to do so.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. 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–2004–18 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–2004–18. 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 the 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–2004–18 and should be submitted on or before September 10, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–19063 Filed 8–19–04; 8:45 am]

BILLING CODE 8010–01–P

[9] *See* Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004)(SR–2002–15). The ISE has proposed a similar rule. *See* SR–ISE–2004–16.

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50198; File No. SR–NSX–2004–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by National Stock Exchange To Adopt an Anti-Money Laundering Compliance Program

August 13, 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 March 5, 2004, National Stock Exchange℠ (''NSX℠'' or ''Exchange'')[3] filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 9, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comment 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 adopt new Rule 5.6, entitled ''Anti-Money Laundering Compliance Program.'' Proposed new language is in italics.

* * * * *

Rule 5.6 Anti-Money Laundering Compliance Program

(a) Each member shall develop and implement an anti-money laundering program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each member's anti-money laundering program must be approved, in writing, by a member of its senior management.

(b) The anti-money laundering programs required by the Rule shall, at a minimum:

(1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;

(2) Establish and implement policies and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;

(3) Provide for independent testing for compliance to be conducted by the member's personnel or by a qualified outside party;

(4) Designate, and identify to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number), a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to the Exchange regarding any change in such designation(s); and

(5) Provide ongoing training for appropriate persons.

In the event that any of the provisions of this Rule 5.6 conflict with any of the provisions of another applicable self-regulatory organization's rule requiring the development and implementation of an anti-money laundering compliance program, the provisions of the rule of the member's Designated Examining Authority shall apply.

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 Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In response to the events of September 11, 2001, President Bush signed into law on October 26, 2001, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the ''PATRIOT Act'')[5] to address terrorist threats through enhanced domestic security measures, expanded surveillance powers, increased information sharing and broadened anti-money laundering requirements. The PATRIOT Act amends, among other laws, the Bank Secrecy Act, as set forth in Title 31 of the United States Code.[6] Certain provisions of Title III of the PATRIOT Act, also known as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (''MLAA''), impose affirmative obligations on a broad range of financial institutions, including broker-dealers, specifically requiring the establishment of anti-money laundering monitoring and supervisory programs.

MLAA Section 352 requires all financial institutions (including broker-dealers) to establish anti-money laundering programs that include, at a minimum: (i) Internal policies, procedures and controls; (ii) the specific designation of an anti-money laundering compliance officer; (iii) an ongoing employee training program; and (iv) an audit function to test the anti-money laundering program.

The Commission had previously approved several other self-regulatory organizations' (''SROs'') proposals (including those of the NYSE and the NASD) to adopt rules requiring their members to establish anti-money laundering compliance programs with the minimum standards described above.[7] Proposed NSX Rule 5.6 involves similar requirements. Adoption of the proposed rule would establish a regulatory framework for members to comply with the requirements of the PATRIOT Act consistent with that imposed by other SROs.

All members, regardless of whether the Exchange is the DEA, will be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange recently changed its name and was formerly known as The Cincinnati Stock Exchange or ''CSE.'' *See* Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (SR–CSE–2003–12).

[4] See letter from James C. Yong, Senior Vice President of Regulation and General Counsel, NSX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 9, 2004 (''Amendment No. 1''). In Amendment No. 1, NSX deleted the phrase ''While the Exchange views the regulatory oversight of members' compliance with the requirements of the PATRIOT Act to be a designated examining authority function under section 17(d) of the Securities Exchange Act of 1934 (the ''Act'')'' and added language to the text of the proposed rule to clarify that, in the event any of the provisions of the rule conflicted with any of the provisions of another applicable self-regulatory organization's rule requiring, the development and implementation of an anti-money laundering compliance program, the provisions of the member's Designated Examining Authority would apply.

[5] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107–56, 115 Stat. 272 (2001).

[6] 31 U.S.C. 5311, *et seq.*

[7] *See, e.g.*, Securities Exchange Act Release No. 45798 (April 22, 2002), 67 FR 20854 (April 26, 2002)(order approving SR–NASD–2002–10 and SR–NASD–2002–24).

required to designate and identify to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number), a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to the Exchange regarding any change in that designation.

The exchange is not currently a DEA for any of its members. If the Exchange becomes a DEA for any of its members, its members would be subject to examination by the Exchange for compliance with the PATRIOT Act requirements.

In Amendment No. 1 the Exchange added language to the text of the proposed rule to clarify that, in the event any of the provisions of the rule conflicted with any of the provisions of another applicable self-regulatory organization's rule requiring, the development and implementation of an anti-money laundering compliance program, the provisions of the member's Designated Examining Authority would apply.

2. Statutory Basis

The Exchange believes that the statutory basis for the proposed rule change is section 6(b)(5) of the Act,[8] in that it is designed to promote just and equitable principles of trade, to foster cooperating and coordination with persons engaged in regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received in connection with the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 organizations 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 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–NSX–2004–02 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–NSX–2004–02. This file number should be included in the subject line if e-mail is used. To help the Commission process and review 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 filings will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from the submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2004–02 and should be submitted on or before September 10, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–19062 Filed 8–19–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50196; File No. SR–NYSE–2004–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Its Rules Regarding Listed Company Relations Proceedings

August 13, 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 9, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 29, 2004, the Exchange submitted Amendment No. 1 to the original proposal.[3] On August 3, 2004, the Exchange submitted Amendment No. 2 to the original proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 26, 2004 (''Amendment No. 1''). Amendment No. 1 replaced the proposed rule text in the original proposal to reflect changes in NYSE Rule 103C that the Commission recently had approved. *See* Securities Exchange Act Release No. 49345 (March 1, 2004), 69 FR 10791 (March 8, 2004).

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 2, 2004 (''Amendment No. 2''). Amendment No. 2 deleted NYSE Rule 103C and added the text of NYSE Rule 103C, as proposed to be amended, to the Listed Company Manual; added proposed rule text to provide for a review of the issuer's notice of a request for a change of specialist unit by the Exchange's Regulatory Group; and replaced a portion of the discussion in the purpose section of the filing to reflect these changes.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The proposed rule change, as amended, seeks to remove NYSE Rule 103C (Listed Company Relations Proceedings), to add a new Section 806.01 to NYSE's Listed Company Manual (Change of Specialist Unit upon Request of Company), and to add new rule text to NYSE Rule 103B pertaining to specialist reallocations following a specialist removal pursuant to the new Listed Company Manual Rule 806.01.

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, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

The proposed changes to the rule text for NYSE Rules 103B and 103C and for new Section 860.01 in the NYSE's Listed Company Manual, marked to show changes from the Exchange's existing rules, is set forth in Exhibit A hereto.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to remove Rule 103C (Listed Company Relations Proceedings) and substitute it with a new Listed Company Manual Section 806.01 in order to provide a more efficient and meaningful method for resolving disputes between listed companies and their assigned specialist units.

The Exchange recognizes that the working relationship between a listed company and its specialist unit is of paramount importance. To help further this relationship, the Exchange provides a listed company with the opportunity to participate in the selection of its assigned specialist unit in accordance with the policies and procedures set forth in Exchange Rule 103B.[5] Similarly, NYSE Rule 106 provides for a high level of interaction between the listed company and its specialist unit. These provisions are extremely beneficial to both the listed company and its specialist unit and promote a closer working relationship between them. Notwithstanding the success of these provisions, situations may occasionally arise in which a listed company and its specialist unit cannot easily resolve differences.

To address such listed company relations and compatibility issues, the Exchange adopted its current Rule 103C, which sets forth the process by which listed companies can request reassignment to a different specialist unit. However, the procedure set forth in its current Rule 103C is cumbersome and extremely lengthy. Moreover, under the current rule, even if it quickly becomes apparent that the listed company and its specialist unit are unable to resolve their differences, no reassignment can occur until at least one year after the listed company's request. It is likely for these reasons that no listed company has commenced a Rule 103C proceeding since the rule's adoption. Thus, it is necessary to provide a more meaningful and responsive mechanism to address non-regulatory issues between a listed company and its assigned specialist unit. This will promote the continued efficient operation of the marketplace and promote good relationships with and between listed companies and their specialists.

In addition, proceedings under its current Rule 103C occur under the oversight of the Quality of Markets Committee, before a subcommittee consisting of, among others, certain Exchange officials. This process no longer makes sense given the recent changes to the Exchange's governance structure.[6]

The Exchange will codify in its Listed Company Manual a new section, 806.01, entitled ''Change of Specialist Unit upon Request of Company.'' This is the same section of the Listed Company Manual that includes the provision under which listed companies may voluntarily de-list from the Exchange. Codification in this section reflects the fact that under these circumstances, the change of specialist represents an issuer choice: In this case, a choice to change its specialist rather than a choice to change the market on which the company is listed. Section 806.01 will provide a formal procedure whereby a listed company may give written notice to the Exchange of its request to change its specialist unit (the ''Issuer Notice''). The subject specialist unit will be provided with the Issuer Notice and given an opportunity to respond in writing. The Exchange will then appoint a committee to conduct a mediation of the issues that have arisen between the company and the specialist unit, consisting of representatives from the Exchange's Board of Executives (''BOE''), including at least one BOE floor broker representative, at least one BOE investor representative and at least one BOE listed company representative. At any time the listed company may give the Exchange notice that it is concluding the mediation because it wishes to continue with its specialist unit. However, after three months if the listed company wishes to proceed with the change of specialist unit, it may do so by filing a notice to that effect with the Exchange. The listed company stock would then be put up for allocation under NYSE Rule 103B (Specialist Stock Allocation).

The procedure also requires that a copy of the Issuer Notice and any specialist response be provided to the Exchange's Regulatory Group for its review. The Regulatory Group will have two weeks to review the Issuer Notice before the earliest date that the mediation could get underway, and the Regulatory Group may request a review of the matter by the Regulatory Oversight Committee (''ROC'') of the Exchange's Board of Directors, a committee consisting entirely of independent directors. The mediation process may commence and continue during the Regulatory Group's review. However, where a review by the ROC has been requested, no change of specialist may occur until the ROC makes a final determination that, as a regulatory matter, it is appropriate to permit such a change. In making such determination, the ROC may consider all relevant regulatory issues, including without limitation whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or in retaliation for a refusal by a specialist to engage in conduct that is illegal or violates Exchange rules.

When a listed company change of specialist occurs under this new procedure, and the listed company's security is put up for allocation to a specialist, the currently assigned specialist unit may apply for the allocation consistent with the policies and procedures set forth in NYSE Rule 103B. If the currently assigned specialist unit does not apply for the allocation,

[5] *See* Securities Exchange Act Release No. 46579 (October 1, 2002), 67 FR 63004 (October 9, 2002) (SR–NYSE–2002–31) (codifying the specialist stock allocation policy as Rule 103B).

[6] *See* Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (SR–NYSE–2003–34). *See also* Securities Exchange Act Release No. 49345 (March 1, 2004), 69 FR 10791 (March 8, 2004) (SR–NYSE–2004–02).

the unit may not be allocated the security under the provisions of NYSE Rule 103B relating to selection of a specialist unit by the Allocation Committee. No negative inference for allocation or regulatory purposes may be made against a specialist unit that has been changed pursuant to Section 806.01 of the Listed Company Manual. Similarly, the specialist unit shall not be afforded preferential treatment in subsequent allocations as a result of a change pursuant to such provision.

2. Statutory Basis

The basis under the Act for this proposed rule change, as amended, is the requirement under Section 6(b)(5) [7] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and 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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The 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 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–NYSE–2004–04 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–2004–04. 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 NYSE. 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–2004–04 and should be submitted on or before September 10, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A.—Text of the Proposed Rule Change

(Changes are *italicized;* deleted material is in [brackets])

[Listed Company Relations Proceedings

Rule 103C. (a) A listed company may file with the New Listings & Client Service Division a written notification (''Issuer Notice''), signed by the company's chief executive officer, that it wishes to commence a proceeding whereby the Quality of Markets Committee (''QOMC'') shall attempt to mediate and resolve non-regulatory issues that have arisen between the company and its assigned specialist unit. The Issuer Notice shall indicate the specific issues sought to be mediated and resolved, and what steps, if any, have been taken to try to address them before the filing of the Notice.

(b) The QOMC shall refer the Issuer Notice to its Listed Company Relations Subcommittee (the ''Subcommittee'') which shall consist of four Board of Executives members (two of whom are representatives of listed companies and a senior officer of the Exchange. The Subcommittee shall review the Issuer Notice and shall notify the subject specialist unit that a Listed Company Relations Proceeding (''LCRP'') is being commenced pursuant to this rule, and that the LCRP shall run for one year from the date of notice to the specialist unit, unless concluded earlier by the listed company. The specialist unit shall be provided with a copy of the Issuer Notice, and shall be given two weeks within which to submit a written response to the Subcommittee.

(c) After the two-week period for a response from the subject specialist unit, the Subcommittee shall meet with representatives of the listed company and the specialist unit that are parties to the LCRP, and shall identify specific steps that may be taken to mediate and resolve matters indicated in the Issuer Notice.

(d) The parties to the LCRP shall each submit a written report to the Subcommittee no later than three months from the date the LCRP is commenced with respect to all matters indicated in the Issuer Notice, and any other matter that either party believes may have a bearing on the LCRP. The written report shall include a description of the progress each party has made on the specific steps established by the Subcommittee. The listed company may give written notice that it is concluding the LCRP at any time if it believes matters have been satisfactorily addressed. If the listed company wishes the LCRP to continue, it must so state. After receiving the written reports from the parties to the LCRP, the Subcommittee shall then advise the QOMC on the Subcommittee's conclusions regarding

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

whether or not the specialist has successfully completed the specific steps established by the Subcommittee. The Subcommittee may meet further with the parties to the LCRP, and identify such other specific steps that may be taken to resolve matters, as it deems appropriate. The same process shall be followed at six and nine month intervals from the date the LCRP is commenced, unless the listed company has chosen to conclude the LCRP.

(e) At the end of one year from the commencement of the LCRP, the listed company shall, in writing, either (i) inform the Subcommittee that it wishes to conclude the LCRP; or (ii) inform the Subcommittee that matters between it and its specialist unit remain unresolved, and that it wishes that its stock be assigned to a different specialist unit. The Subcommittee shall prepare a report to the QOMC recommending that it is in the best interest of the continued efficient operation of the Exchange's market, either that (i) the LCRP should be concluded; or (ii) that the listed company's stock should be assigned to a different specialist unit. The Subcommittee's report to the QOMC shall indicate whether or not the specialist has successfully completed the specific steps established by the Subcommittee.

(f) The QOMC shall review the report prepared by the Subcommittee and shall give the parties to the LCRP an opportunity to present their views in writing. The QOMC shall then make a recommendation to the Exchange's Board of Directors as to the disposition of the LCRP, including a recommendation as to whether the listed company's stock should be assigned to a different specialist unit.

(g) The Exchange's Board of Directors shall review the QOMC's recommendation and may give the parties to the LCRP an opportunity to present their views in writing. The Board of Directors shall consider the efforts taken by the specialist to complete the Subcommittee's specific steps and then determine the appropriate disposition of the LCRP. The Board of Directors may, if it determines the non-regulatory issues that have arisen between the listed company and the specialist to be irreconcilable differences, not based upon bias or other violations of public policy, and that a reallocation would be in the best interest of the continued efficient operation of the Exchange's market, direct that the Allocation Committee reallocate the listed company's stock to a different specialist unit. The currently-assigned specialist unit and the member organization of any specialist member of the Board of Directors shall be precluded from applying to be allocated the stock. No reference to the LCRP or the Board's action shall be retained in the information maintained by the Allocation Committee with respect to the currently-assigned specialist unit, and the currently-assigned specialist unit shall not be afforded preferential treatment in subsequent allocations as a result of a reallocation pursuant to this rule.]

New York Stock Exchange Listed Company Manual

806.0 [Rule of the Exchange in Respect of Removal From List Upon Request of Company] *Request of Listed Company for a Change of Specialist Unit or for Removal From the List*

806.01 Change of Specialist Unit Upon Request of Company

(a) A listed company may file with the Corporate Secretary of the Exchange a written notice (the ''Issuer Notice''), signed by the company's chief executive officer, that it wishes to request a change of specialist unit. The Issuer Notice shall indicate the specific issues prompting this request, and what steps, if any, have been taken to try to address them before the filing of the Issuer Notice. The Corporate Secretary shall provide copies of the Issuer Notice to both the Exchange's New Listings & Client Service Division and to its Regulatory Group.

(b) The Corporate Secretary shall notify the subject specialist unit that a Listed Company Change of Specialist Mediation (''Mediation'') is being commenced pursuant to this provision, and shall provide the specialist with a copy of the Issuer Notice. Within two weeks, the specialist unit may submit a written response to the Exchange's Corporate Secretary. The Corporate Secretary shall provide copies of any such written response to both the New Listings & Client Service Division and the Regulatory Group. The last day of that two-week period shall be referred to herein as the ''Specialist Response Date''.

(c) The Regulatory Group shall review the Issuer Notice and any specialist response, and may request a review of the matter by the Regulatory Oversight Committee (''ROC'') of the Exchange's Board of Directors. The Mediation process described hereunder may continue during the Regulatory Group's review, however, where a review by the ROC has been requested, no change of specialist unit may occur until the ROC makes a final determination that it is appropriate to permit such change. In making such determination, the ROC may consider all relevant regulatory issues, including without limitation whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or in retaliation for a refusal by a specialist to engage in conduct that is illegal or violates Exchange rules. Notwithstanding the Regulatory Group's review of any matter raised during the process described herein, the Regulatory Group may at any time take any regulatory action that it may determine to be warranted.

(d) The Exchange shall facilitate a mediation of the issues that have arisen between the company and the specialist unit. The Exchange shall appoint a committee consisting of at least one floor broker representative from the Exchange's Board of Executives (''BOE''), at least one BOE investor representative and at least one BOE listed company representative for each Mediation (''the Mediation Committee'').

(e) As soon as practicable after the Specialist Response Date, the Mediation Committee shall commence to meet with representatives of the listed company and the specialist unit in an attempt to mediate the matters indicated in the Issuer Notice.

(f) Any time after the filing of the Issuer Notice, the listed company may file with the Corporate Secretary of the Exchange a written notice, signed by the company's chief executive officer, that it is concluding the Mediation because it wishes to continue with the same specialist unit.

(g) After the expiration of three months from the Specialist Response Date, the listed company may file with the Corporate Secretary of the Exchange written notice, signed by the company's chief executive officer, that it wishes to proceed with the change of specialist unit. Subject to paragraph (c) above, as soon as practicable thereafter, the security shall be put up for allocation under Exchange Rule 103B.

806.[00]*02 Removal From List Upon Request of Company*

* * * * *

New York Stock Exchange Rules

Specialist Stock Allocation

Rule 103B

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Allocation Policy and Procedures

Purpose

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This document presents the policy of the Exchange with respect to the allocation of equity securities when: (1) [when] A common stock is to be initially listed on the Exchange; (2) [when] a security is to be reallocated as a result of disciplinary or other proceedings under Exchange Rules 103A, 475 and 476; [or] (3) [when] a specialist unit voluntarily surrenders its registration in a security as a result of possible disciplinary or performance improvement action; (4) a specialist unit is changed pursuant to Section 806.01 of the Exchange's Listed Company Manual; or (5) [and the allocation of] an Exchange-Traded Fund[s] is to be admitted to trading on the Exchange on an unlisted trading privileges basis (see Section VIII).

* * * * *

V. Policy Notes

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Change of Specialist Unit Upon Request of Issuer

When an issuer has requested a change of specialist unit pursuant to Section 806.01 of the Exchange's Listed Company Manual, that unit may apply for the allocation consistent with the policies and procedures set forth in this Rule 103B. If the specialist unit does not apply for such allocation, the unit may not be allocated the security under the provisions of this rule relating to selection of a specialist unit by the Allocation Committee (Option 1).

No negative inference for allocation or regulatory purposes is to be made against a subject specialist unit in the event that a specialist unit is changed pursuant to Section 806.01 of the Exchange's Listed Company Manual. Similarly, the specialist unit shall not be afforded preferential treatment in subsequent allocations as a result of a change pursuant to such provision.

[FR Doc. 04–19064 Filed 8–19–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P048]

Commonwealth of Kentucky

As a result of the President's major disaster declaration for Public Assistance on August 6, 2004 the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Adair, Allen, Barren, Breckinridge, Butler, Clinton, Cumberland, Daviess, Edmonson, Grayson, Green, Hancock, Hardin, Hart, Larue, Meade, Metcalfe, Monroe, Nelson, Ohio, Russell, Spencer, Taylor, Warren, Washington, and Wayne Counties in the State of Kentucky constitute a disaster area due to damages caused by severe storms and flooding occurring on July 13, 2004 and continuing through July 15, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 5, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Non-profit organizations without credit available elsewhere	2.750
Non-profit organizations with credit available elsewhere	4.875

The number assigned to this disaster for physical damage is P04806.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: August 12, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–19105 Filed 8–19–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 25, 2004 on page 29775.

DATES: Comments must be submitted on or before September 20, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Psychological Training.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0101.

Form(s): NA.

Affected Public: A total of 5,000 pilots and flight crew members.

Abstract: This report is necessary to establish qualifications of eligibility to receive voluntary psychological training with the U.S. Air Force and will be used as proper evidence of training.

The information is collected from pilots and crewmembers for application to receive voluntary training.

Estimated Annual Burden Hours: An estimated 733 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 13, 2004.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 04–19161 Filed 8–19–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity To Participate, Criteria Requirements and Application Procedure for Participation in the Military Airport Program (MAP)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation(DOT).

ACTION: Notice of criteria and application procedures for designation

or redesignation, for the fiscal year 2005 MAP.

SUMMARY: This notice announces the criteria, application procedures, and schedule to be applied by the Secretary of Transportation in designating or redesignating, and funding capital development annually for up to 15 current (joint-use) or former military airports seeking designation or redesignation to participate in the Military Airport Program (MAP).

The MAP allows the Secretary to designate current (joint-use) or former military airports to receive grants from the Airport Improvement Program (AIP). The Secretary is authorized to designate an airport (other than an airport designated before August 24, 1995) only if:

(1) The airport is a former military installation closed or realigned under the Title 10 U.S.C. 2687 (announcement of closures of large Department of Defense installations after September 30, 1977), or under Section 201 or 2905 of the Defense Authorization Amendments and Base Closure and Realignment Acts; or

(2) The airport is a military installation with both military and civil aircraft operations.

The Secretary shall consider for designation only those current or former military airports, at least partly converted to civilian airports, as part of the national air transportation system, that will reduce delays at airports with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings, or will enhance airport and air traffic control system capacity in metropolitan areas or reduce current and projected flight delays (47 U.S.C. 47118(c)).

DATES: Applications must be received on or before September 29, 2004.

ADDRESSES: Submit an original and two copies of Standard Form (SF) 424, ''Application for Federal Assistance,'' prescribed by the Office of Management and Budget Circular A–102, available at *http://www.faa.gov/arp/ace/forms/sf424.doc,* along with any supporting and justifying documentation. Application should specifically request to be considered for designation or redesignation to participate in the fiscal year 2005 MAP. Submission should be sent to the Regional FAA Airports Division or Airports District Office that serves the airport. Applicants may find the proper office on the FAA Web site *http://www.faa.gov/arp/regions.cfm?nav=regions* or may contact the office below.

FOR FURTHER INFORMATION CONTACT: Mr. Murdock (*oliver.murdock@faa.gov*) or Leonard C. Sandelli (*len.sandelli@faa.gov*), National Planning Division (APP–400), Office of Airport Planning and Programming, Federal Aviation Administration (FAA), 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8244, or (202) 267–8785, respectively.

SUPPLEMENTARY INFORMATION:

General Description of the Program

The MAP provides capital development assistance to civil airport sponsors of designated current (joint-use) military airfields or former military airports that are included in the FAA's National Plan of Integrated Airport Systems (NPIAS). Airports designated to the MAP may obtain funds from a set-aside (currently four percent) of AIP discretionary funds for airport development, including certain projects not otherwise eligible for AIP assistance. These airports may also be eligible to receive grants from other categories of AIP funding.

Number of Airports

A maximum of 15 airports per fiscal year (FY) may participate in the MAP. There are 4 slots available for designation or redesignation in FY 2005. There are no general aviation slots available.

Term of Designation

The maximum term is five fiscal years following designation. The FAA can designate airports for a period less than five years. The FAA will evaluate the conversion needs of the airport in its capital development plan to determine the appropriate length of designation.

Redesignation

Previously designated airpots may apply for redesignation for an additional term not to exceed five years. Those airports must meet current eligibility requirements in 49 U.S.C. 47118 (a) at the beginning of each grant period and have MAP eligible projects. The FAA will evaluate applications for redesignation primarily in terms of warranted projects fundable only under the MAP as these candidates tend to have fewer conversion needs than new candidates. The FAA wants MAP airports to graduate to regular AIP participation.

Eligible Projects

In addition to eligible AIP projects, MAP can fund, fuel farms, utility systems, surface automobile parking lots, hangars, and air cargo terminals up to 50,000 square feet. Designated or redesignated military airports can receive not more than $10,000,000 for fiscal year 2005 and $7,000,000 for each fiscal year after 2005 for projects to construct, improve, or repair terminal building facilities. Designated or redesignated military airports can receive not more than $10,000,000 for fiscal year 2005 and $7,000,000 for each fiscal year after 2005 for MAP eligible projects that include hangars, cargo facilities, fuel farms, automobile surface parking, and utility work.

Designation Considerations

In making designations of new candidate airports, the Secretary of Transportation may only designate an airport, (other than an airport so designated before August 24, 1994) if it meets the following requirements:

(1) The airport is a former military installation closed or realigned under—

(A) Section 2687 of Title 10;

(B) Section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act (BRAC) (10 U.S.C. 2687 note); or

(C) Section 2905 of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note); or

(2) The airport is a military installation with both military and civil aircraft operations.

(3) The airport is classified as a commercial service or reliever airport in the NPIAS. One of the designated airports, if included in the NPIAS, may be a general aviation (GA) airport (public airport other than an air carrier airport, 14 CFR 152.3) that was a former military installation closed or realigned under BRAC, as amended, or 10 U.S.C. 2687. (*See* 49 U.S.C. 47118(g)). A general aviation airport must qualify under (1) above.

In designating new candidate airports, the Secretary shall consider if a grant would:

(1) Reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings; or

(2) Enhance airport and air traffic control system capacity in a metropolitan area or reduce current and projected flight delays.

The application for new designations will be evaluated in terms of how the proposed projects would contribute to reducing delays and/or how the airport would enhance air traffic or airport system capacity and provide adequate user services.

Project Evaluation

Recently realigned or closed military airports, as well as active military airfields with new joint-use agreements, have the greatest need of funding to convert to, or to incorporate, civil

airport operations. Newly converted airports and new joint-use locations frequently have minimal capital development resources and will therefore receive priority consideration for designation and MAP funding. The FAA will evaluate the need for eligible projects based upon information in the candidate airport's five-year Airport Capital Improvement Plan (ACIP). These projects need to be related to development of that airport and/or the air traffic control system.

1. The FAA will evaluate candidate airports and/or the airports such candidate airports would relieve based on the following specific factors:

- Compatibility of airport roles and the ability of the airport to provide an adequate airport facility;
- The capability of the candidate airport and its airside and landside complex to serve aircraft that otherwise must use the relieved airport;
- Landside surface access;
- Airport operational capability, including peak hour and annual capacities of the candidate airport;
- Potential of other metropolitan area airports to relieve the congested airport;
- Ability to satisfy, relieve, or meet air cargo demand within the metropolitan area;
- Forecasted aircraft and passenger levels, type of commercial service anticipated, *i.e.,* scheduled or charter commercial service;
- Type and capacity of aircraft projected to serve the airport and level of operations at the relieved airport and the candidate airport;
- The potential for the candidate airport to be served by aircraft or users, including the airlines, serving the congested airport;
- Ability to replace an existing commercial service or reliever airport serving the area; and
- Any other documentation to support the FAA designation of the candidate airport.

2. The FAA will evaluate the development needs that, if funded, would make the airport a viable civil airport that will enhance system capacity or reduce delays.

Application Procedures and Required Documentation

Airport sponsors applying for designation or redesignation must complete and submit an SF 424, Application for Federal Assistance, and provide supporting documentation to the appropriate FAA Airports regional or district office serving that airport.

Standard Form 424

Sponsors may obtain this fillable form at *http://www.faa.gov/arp/ace/forms/sf424.doc.*

Applicants should fill this form out completely, including the following:

- Mark Item 1, Type of Submission as a ''pre-application'' and indicate it is for ''construction''.
- Mark Item 8, Type of Application as ''new'', and in ''other'', fill in ''Military Airport Program''.
- Fill in Item 11, Descriptive Title of Applicants Project. ''Designation (or redesignation) to the Military Airport Program''.
- In Item 15a, Estimated Funding, indicate the total amount of funding requested from the MAP during the entire term for which you are applying.

Supporting Documentation

(A) Identification as a Current or Former Military Airport. The application must identify the airport as either a current or former military airport and indicate whether it was:

(1) Closed or realigned under Section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act, and/or Section 2905 of the Defense Base Closure and Realignment Act of 1990 (Installations Approved for Closure by the Defense Base Realignment and Closure Commissions), or

(2) Closed or realigned pursuant to 10 U.S.C. 2687 as excess property (bases announced for closure by Department of Defense (DOD) pursuant to this title after September 30, 1977 (this is the date of announcement for closure and not the date the property was deeded to the airport sponsor)), or

(3) A military installation with both military and civil aircraft operations. A general aviation airport applying for the MAP may be joint-use but must also qualify under (1) or (2) above.

(B) Qualifications for MAP:

Submit documents for (1) through (7) below:

(1) Documentation that the airport meets the definition of a ''public airport'' as defined in 49 U.S.C. 47102(16).

(2) Documentation indicating the required environmental review for civil reuse or joint-use of the military airfield has been completed. This environmental review need not include review of the individual projects to be funded by the MAP. Rather, the documentation should reflect that the environmental review necessary to convey the property, enter into a long-term lease, or finalize a joint-use agreement has been completed. The military department conveying or leasing the property, or entering into a joint-use agreement, has the lead responsibility for this environmental review. To meet AIP requirements the environmental review and approvals must indicate that the operator or owner of the airport has good title, satisfactory to the Secretary, or assures that good title will be acquired.

(3) For a former military airport, documentation that the eligible airport sponsor holds or will hold satisfactory title, a long-term lease in furtherance of conveyance of property for airport purposes, or a long-term interim lease for 25 years or longer to the property on which the civil airport is being located. Documentation that an application for surplus or BRAC airport property has been accepted by the Federal Government is sufficient to indicate the eligible airport sponsor holds or will hold satisfactory title or a long-term lease.

(4) For a current military airport, documentation that the airport sponsor has an existing joint-use agreement with the military department having jurisdiction over the airport. This is necessary so the FAA can legally issue grants to the sponsor. Here and in (3) directly above, the airport must possess the necessary property rights in order to accept a grant for its proposed projects during FY 2005.

(5) Documentation that the airport is classified as a ''commercial service airport'' or a ''reliever airport'' as defined in 49 U.S.C. 47102(7) and 47102(18), unless the airport is applying for the general aviation slot.

(6) Documentation that the airport owner is an eligible airport ''sponsor'' as defined in 49 U.S.C. 47102(19).

(7) Documentation that the airport has an FAA approved airport layout plan (ALP) and a five-year airport capital improvement plan (ACIP) indicating all eligible grant projects proposed to be funded either from the MAP or other portions of the AIP.

(C) Evaluation Factors:

Submit information on the items below to assist in our evaluation:

(1) Information identifying the existing and potential levels of visual or instrument operations and aeronautical activity at the current or former military airport and, if applicable, the relieved airport. Also, if applicable, information on how the airport contributes to air traffic system or airport system capacity. If served by commercial air carriers, the revenue passenger and cargo levels should be provided.

(2) A description of the airport's projected civil role and development needs for transitioning from use as a

military airfield to a civil airport. Include how development projects would serve to reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings; or enhance capacity in a metropolitan area or reduce current and projected flight delays.

(3) A description of the existing airspace capacity. Describe how anticipated new operations would affect the surrounding airspace and air traffic flow patterns in the metropolitan area in or near the airport. Include a discussion of whether operations at this airport create airspace conflicts that may cause congestion or whether air traffic works into the flow of other air traffic in the area.

(4) A description of the airport's five-year ACIP, including a discussion of major projects, their priorities, projected schedule for project accomplishment, and estimated costs. The ACIP must specifically identify the safety, capacity, and conversion related projects, associated costs, and projected five-year schedule of project construction, including those requested for consideration for MAP funding.

(5) A description of those projects that are consistent with the role of the airport and effectively contribute to the joint-use or conversion of the airfield to a civil airport. The projects can be related to various improvement categories depending on what is needed to convert from military to civil airport use, to meet required civil airport standards, and/or to provide capacity to the airport and/or airport system. The projects selected (*e.g.*, safety-related, conversion-related, and/or capacity-related), must be identified and fully explained based on the airport's planned use. Those projects that may be eligible under MAP, if needed for conversion or capacity-related purposes, must be clearly indicated, and include the following information:

Airside

- Modification of airport or military airfield for safety purposes, including airport pavement modifications (*e.g.*, widening), marking, lighting, strengthening, drainage or modifying other structures or features in the airport environs to meet civil standards for airport imaginary surfaces as described in 14 CFR part 77.
- Construction of facilities or support facilities such as passenger terminal gates, aprons for passenger terminals, taxiways to new terminal facilities, aircraft parking, and cargo facilities to accommodate civil use.
- Modification of airport or military utilities (electrical distribution systems, communications lines, water, sewer, storm drainage) to meet civil standards. Also, modifications that allow utilities on the civil airport to operate independently, where other portions of the base are conveyed to entities other than the airport sponsor or retained by the Government.
- Purchase, rehabilitation, or modification of airport and airport support facilities and equipment, including snow removal, aircraft rescue, fire fighting buildings and equipment, airport security, lighting vaults, and reconfiguration or relocation of eligible buildings for more efficient civil airport operations.
- Modification of airport or military airfield fuel systems and fuel farms to accommodate civil aviation use.
- Acquisition of additional land for runway protection zones, other approach protection, or airport development.
- Cargo facility requirements.
- Modifications which will permit the airfield to accommodate general aviation users.

Landside

- Construction of surface parking areas and access roads to accommodate automobiles in the airport terminal and air cargo areas and provide an adequate level of access to the airport.
- Construction or relocation of access roads to provide efficient and convenient movement of vehicular traffic to, on, and from the airport, including access to passenger, air cargo, fixed base operations, and aircraft maintenance areas.
- Modification or construction of facilities such as passenger terminals, surface automobile parking lots, hangars, air cargo terminal buildings, and access roads to cargo facilities to accommodate civil use.

(6) An evaluation of the ability of surface transportation facilities (road, rail, high-speed rail, maritime) to provide intermodal connections.

(7) A description of the type and level of aviation and community interest in the civil use of a current or former military airport.

(8) One copy of the FAA-approved ALP for each copy of the application. The ALP or supporting information should clearly show capacity and conversion related projects. Other information such as project costs, schedule, project justification, other maps and drawings showing the project locations, and any other supporting documentation that would make the application easier to understand should also be included. You may also provide photos, which would further describe the airport, projects, and otherwise clarify certain aspects of this application. These maps and ALP's should be cross-referenced with the project costs and project descriptions.

Redesignation of Airports Previously Designated and Applying for up to an Additional Five Years in the Program

Airports applying for redesignation to the Military Airport Program must submit the same information required by new candidate airports applying for a new designation. On the SF 424, Application for Federal Assistance, prescribed by the Office of Management and Budget Circular A–102, airports must indicate their application is for redesignation to the MAP. In addition to the above information, they must explain: (1) Why a redesignation and additional MAP eligible project funding is needed to accomplish the conversion to meet the civil role of the airport and the preferred time period for redesignation not to exceed five years;

(2) Why funding of eligible work under other categories of AIP or other sources of funding would not accomplish the development needs of the airport; and

(3) Why, based on the previously funded MAP projects, the projects and/or funding level were insufficient to accomplish the airport conversion needs and development goals.

This notice is issued pursuant to Title 49 U.S.C. 47118.

Dennis E. Roberts,

Director, Office of Airport Planning and Programming.

[FR Doc. 04–19162 Filed 8–19–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–17969]

Notice of Request for Comments on Renewing Approval for an Information Collection: OMB Control No. 2126–0014 (Transportation of Hazardous Materials, Highway Routing)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The FMCSA announces that the Information Collection Request (ICR) described in this notice is being sent to the Office of Management and Budget (OMB) for review and approval. This information collection requires States

and Indian tribes to identify designated/restricted highway routes and restrictions or limitations affecting how motor carriers may transport certain hazardous materials on the highway. The **Federal Register** notice announcing a 60-day comment period on this information collection was published on April 13, 2004 (69 FR 19610). We are required to send ICRs to OMB under the Paperwork Reduction Act.

DATES: Please submit comments by September 20, 2004.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. Be sure to include the docket number appearing in the heading of this document on your comment. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you would like to be notified when your comment is received, you must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Johnsen (202–366–4111), Hazardous Materials Division (MC–ECH), Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., EST., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Transportation of Hazardous Materials; Highway Routing.

OMB Control Number: 2126–0014.

Background: The data for the Transportation of Hazardous Materials; Highway Routing designations are collected under authority of 49 U.S.C. 5112 and 5125. That authority places responsibility on the Secretary of Transportation (Secretary) to specify and regulate standards for establishing, maintaining, and enforcing routing designations.

Under 49 CFR 397.73, the Administrator has the authority to request that each State and Indian tribe, through its routing agency, provide information identifying hazardous materials routing designations within their respective jurisdictions. That information is collected and consolidated by the FMCSA and published annually in whole, or as updates, in the **Federal Register**.

Respondents: The reporting burden is shared by the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, Northern Marianas, and the Virgin Islands.

Average Burden Per Response: 15 minutes.

Estimated Total Annual Burden: The annual reporting burden is estimated to be 13 hours, calculated as follows: (53 respondents × 1 response × 15 minutes/60 minutes = 13.25 hours, rounded to 13 hours).

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; 49 U.S.C. 5112 and 5125; and 49 CFR 1.73 and 397.73.

Issued on: August 10, 2004.

Annette M. Sandberg,

Administrator.

[FR Doc. 04–19156 Filed 8–19–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–18898 and FMCSA–1998–3639]

Comprehensive Safety Analysis 2010 Initiative

AGENCY: Federal Motor Carrier Safety Administration.

ACTION: Notice of Public Listening Sessions.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces a series of Public Listening Sessions to solicit input on ways the FMCSA can improve its process of monitoring and assessing the safety of the motor carrier industry and how that information should be presented to the public. FMCSA is calling this effort the Comprehensive Safety Analysis 2010 Initiative. Through its current compliance review process, FMCSA is able to conduct compliance reviews on only a small percentage of the 675,000 active interstate motor carriers. The FMCSA is looking for ways to improve monitoring of motor carriers, to make agency processes more efficient, and to expand its enforcement and compliance reach in the regulated community in order to improve FMCSA's ability to meet its goal of significantly reducing crashes, fatalities, and injuries involving large trucks and buses.

Dates and Locations: The Public Listening Sessions will be held from 9 a.m. until 4 p.m. on the following dates at the following locations:

Session 1: September 21, 2004—Doubletree Hotel, Mission Valley, 7450 Hazard Center Drive, San Diego, California.

Session 2: September 28, 2004—Sheraton Atlanta, 165 Courtland Street at International Blvd, Atlanta, Georgia.

Session 3: October 5, 2004—Hampton Inn & Suites Dallas/Mesquite, 1700 Rodeo Drive, Mesquite, Texas.

Session 4: October 12, 2004—Wyndham Chicago, 633 North St. Clair, Chicago, IL.

Session 5: October 19, 2004—Fairview Park Marriot, 3111 Fairview Park Drive, Falls Church, VA.

Session 6: October 26, 2004—Sheraton Springfield, One Monarch Place, Springfield, MA.

Registration for each session will be limited. For more information or to register to attend or speak at the Public Listening Sessions, see **FOR FURTHER INFORMATION CONTACT** below.

ADDRESSES: You may also submit written comments identified by DOT DMS Docket Number FMCSA–2004–18898 and FMCSA–1998–3639 by any of the following methods:

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 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this proceeding. 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 for further information.

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 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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 DOT's complete Privacy Act Statement in the **Federal Register**

published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: To register to attend a Public Listening Session, please follow one of two methods:

(a) Go online to: *http://www.Acteva.com/go/FMCSA* and fill in the necessary information. You will be asked for information such as your name, title, organization, mailing address and which session you wish to attend; or

(b) Telephone Touchstone Consulting, Inc. in Washington, DC at (202) 449–7354 and a person will register you over the phone.

Please note that registration for the Public Listening Sessions will open at 9 a.m. EDT on August 30, 2004 and will end at 5 p.m. EDT on the Tuesday preceding each session. For example, registration for the October 26, 2004 Public Listening Session will close 5 p.m. EDT Tuesday October 19, 2004.

Registration at each Public Listening Session will be limited to the first people to sign up. You will be asked for identification at the welcome table at the event. Lunch will be served.

All attendees will be encouraged to participate during the Public Listening Session discussion periods.

For general information about this initiative, contact Mr. William Quade, (202) 366–2172, FMCSA, Office of Enforcement and Compliance, 400 Seventh Street, SW., Room 8310, Washington, DC 20590 or at *William.quade@fmcsa.dot.gov*.

SUPPLEMENTARY INFORMATION: FMCSA is reviewing its process for monitoring and assessing the safety of the motor carrier industry. FMCSA would like its safety oversight process to reflect a proactive, research-based, legally supportable, comprehensive approach to improving commercial motor vehicle safety—one that maximizes use of FMCSA resources including information systems and technology, reduces high-risk behavior in the motor carrier industry, and enhances FMCSA's ability to meet its goal of significantly reducing crashes, fatalities, and injuries involving large trucks and buses. Although the current process reflects these attributes, the agency recognizes the limitations of the process and wants to address them.

To that end, FMCSA is holding six Public Listening Sessions to solicit ideas and feedback from its stakeholders and all interested parties, including the industry, drivers, insurance groups, safety advocacy groups, and FMCSA's governmental partners, especially States, concerning how FMCSA might improve its process of monitoring and assessing the safety of the motor carrier industry. The Public Listening Sessions will be arranged and facilitated by a FMCSA contractor.

Background

The compliance review (CR) is the centerpiece of FMCSA's current oversight program and is an effective tool for saving lives and assessing a carrier's safety condition. FMCSA's current CR program uses adherence to Federal laws and regulations as the primary indicator of the safety posture of a motor carrier. This tool focuses on motor carriers and renders safety fitness determinations in accordance with Congressional mandates expressed in 49 U.S.C. 31144, Safety fitness of owners and operators (requirement for safety fitness determination of owners and operators of commercial motor vehicles). While FMCSA determines, to a limited extent, the compliance and safety of commercial motor vehicle (CMV) drivers and pursues enforcement against them, if warranted, the safety fitness of individual CMV drivers is not evaluated by current FMCSA systems. Also, because the CR relies on the USDOT number as a unique identifier, safety fitness assessments do not track the individuals within a motor carrier responsible for safety such as CMV drivers, corporate officers, partners, or safety directors.

Impetus for Change

Since the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 13 Stat. 1748) created FMCSA as an independent DOT modal agency, the motor carrier population has increased steadily. At the same time, FMCSA's programmatic responsibilities have also increased with:

- Implementation of Congressional mandates such as the New Entrant Program (Section 210 of MCSIA);
- Preparing for the opening of the border with Mexico; and
- Taking an increased role in ensuring transportation security.

FMCSA's existing compliance and safety programs improve and promote safety performance. However, despite increases in regulated population and programmatic responsibilities, resources for these efforts remain relatively constant. This flattening of resources renders it difficult for existing programs, and the information systems that support these programs, to maintain prolonged and sustained improvements to motor carrier safety.

In its present structure, FMCSA's CR program is resource intensive and reaches only a small percentage of motor carriers. On-site CRs take one safety investigator an average of 3 to 4 days to complete so, at present staffing levels, FMCSA can perform CRs on only a small portion of the 675,000 active interstate motor carriers. In addition, the current CR program does not easily reflect the impact that people involved in the carrier's operation, such as managers, owners, and drivers operators, have on safety. Delayed, incomplete, and inaccurate data impede efforts to establish a performance-based, automated, data-driven process for improving safety performance. These limitations have caused FMCSA to explore ways to improve its safety oversight process.

The Public Listening Sessions Seek Stakeholder Input

FMCSA has developed a preliminary list of ideal attributes and basic components that FMCSA believes should be part of any model for FMCSA's oversight of the industry:

- *Flexible—Adaptable to Changing Environment.*
- *Efficient—Maximize Use of Resources.*
- *Effective-Improve Safety Performance.*
- *Innovative—Leverage Data and Technology.*
- *Equitable—Fair and Unbiased.*

During the Public Listening Sessions FMCSA will explain its processes and research to date, and describe the attributes and components the Agency believes are appropriate underpinnings to evaluate safety fitness. FMCSA will accept comments on the desired state of safety compliance in the industry, the suitability of the preliminary list of attributes and components, and the information, processes, and strategies FMCSA should consider for a new approach to safety analyses.

The Public Listening Sessions will include a morning plenary session and up to four facilitated afternoon breakout sessions. The participants will be invited to discuss, among other things, the following:

1. How effective is FMCSA's current compliance review process? What is working now? Not working?

2. What alternative methods should FMCSA consider for determining carrier safety fitness and for addressing unsafe behaviors?

3. What should be the focus of FMCSA's safety analysis process? Motor carriers? Drivers? Owners? Other people or entities associated with safety?

4. Should FMCSA present its safety evaluations to the public? How?

5. What should be the key attributes of a program to assess motor carrier safety?

6. How should safety be measured? This measurement may be used to focus FMCSA resources and to assess safety under 49 U.S.C. 31144, Safety fitness of owners and operators.

A. Which data elements (crashes, inspection results, violations, financial condition) are the best indicators of safe (or unsafe) operations? Are there other important safety indicators we currently overlook?

B. How should FMCSA consider historical data when measuring safety?

C. How should FMCSA consider unique characteristics of the operations (hazardous materials, passengers, others) when measuring safety?

7. What compliance and enforcement tools are most effective? Currently FMCSA's interventions include issuing warning letters, issuing civil penalties, and placing motor carriers out-of-service.

A. What types of interventions are most effective?

B. How should FMCSA use history and characteristics of the motor carrier's operations in determining which intervention is appropriate?

Effect on Other Regulations

FMCSA is conducting a related rulemaking proceeding (RIN AA37; Docket No. FMCSA–1998–3639) to examine the Safety Fitness Procedures the agency uses to rate motor carriers. An Advance Notice of Proposed Rulemaking was published for this docket in 1998 (63 FR 38788; July 20, 1998). These listening sessions are broader in scope than the Safety Fitness Procedures, because they relate to FMCSA's entire compliance review and safety analysis process, FMCSA does anticipate that some of the comments at the listening session or comments to the docket may contain information relevant to the Safety Fitness Procedures proceeding. Therefore, FMCSA will be adding all comments made during the listening sessions and comments made to this docket to Docket No. FMCSA–1998–3639 for RIN 2126–AA37. FMCSA anticipates publishing a subsequent rulemaking notice under RIN 2126–AA37 following analysis of the listening sessions and decisions on FMCSA's long-term plan for monitoring motor carrier safety.

Issued on: August 18, 2004.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 04–19239 Filed 8–18–04; 2:16 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34528]

Indiana Boxcar Corporation—Continuance in Control Exemption—Chesapeake & Indiana Railroad Company, Inc.

Indiana Boxcar Corporation (Boxcar) has filed a verified notice of exemption to continue in control of Chesapeake & Indiana Railroad Company, Inc. (Chesapeake), upon Chesapeake's becoming a Class III rail carrier.

The transaction was expected to be consummated on July 29, 2004.

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34529, *Chesapeake & Indiana Railroad Company, Inc.—Operation Exemption—The Town of North Judson, IN.* In that proceeding, Chesapeake seeks to operate 32.97 miles of track extending from Wellsboro, milepost 15.2, to LaCrosse, milepost 0.6, in LaPorte County, IN, and from Malden, milepost 230.9 through LaCrosse, to North Judson, milepost 212.5, in Porter and Starke Counties, IN, which is owned by the Town of North Judson.

Boxcar currently controls one Class III rail carrier, the Vermillion Valley Railroad Company, Inc., operating in Vermillion and Warren Counties, IN.

Under 49 CFR 1180.2(d)(2), a continuance in control transaction is exempt if: (1) The railroads do not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. There are no Class I carriers involved in this transaction and Boxcar states that the railroads do not connect with each other and there are no plans to acquire additional rail lines for the purpose of making such a connection. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34528, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Dated: August 16, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–19126 Filed 8–19–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34529]

Chesapeake & Indiana Railroad Company, Inc.—Operation Exemption—The Town of North Judson, IN

Chesapeake & Indiana Railroad Company, Inc. (Chesapeake), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate, pursuant to an unexecuted agreement under negotiation with the Town of North Judson, IN, 32.97 miles of track extending from Wellsboro, milepost 15.2, to LaCrosse, milepost 0.6, in LaPorte County, IN, and from Malden, milepost 230.9, through LaCrosse, to North Judson, milepost 212.5, in Porter and Starke Counties, IN.

The transaction was scheduled to be consummated on or after July 29, 2004.

This transaction is related to STB Finance Docket No. 34528, *Indiana Boxcar Corporation—Continuance in Control Exemption—Chesapeake & Indiana Railroad Company, Inc.*, wherein Indiana Boxcar Corporation has filed a verified notice of exemption to continue in control of Chesapeake upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34529, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Dated: August 16, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–19124 Filed 8–19–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–865X]

Honey Creek Railroad, Inc.—Abandonment Exemption—in Henry County, IN

The Honey Creek Railroad, Inc. (HCR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its entire approximately 5.9-mile line of railroad, between Sulphur Springs and New Castle, in Henry County, IN.[1] The line traverses United States Postal Service Zip Code 47362.

HCR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

Where, as here, the carrier is abandoning its entire line, the Board does not normally impose labor protection under 49 U.S.C. 10502(g), unless the evidence indicates the existence of: (1) A corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. *See Wellsville, Addison & Galeton R. Corp.—Abandonment*, 354 I.C.C. 744 (1978); and *Northampton and Bath R. Co.—Abandonment*, 354 I.C.C. 784 (1978). Because HCR does not appear to have a corporate affiliate or parent that will continue similar operations or that could benefit from the proposed abandonment, employee protection conditions will not be imposed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 21, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 30, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 9, 2004, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to the HCR's representative: Richard R. Wilson, 127 Lexington Avenue, Suite 100, Altoona, PA 16601.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

HCR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 27, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), HCR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by HCR's filing of a notice of consummation by August 20, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Dated: August 16, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–19125 Filed 8–19–04; 8:45 am]

BILLING CODE 4915–01–P

[1] HCR acquired the line in *Honey Creek Railroad, Inc.—Acquisition and Operation Exemption—Line of Consolidated Rail Corporation*, Finance Docket No. 32332 (ICC served Sept. 20, 1993). There, it was specified that the line runs between Consolidated Rail Corporation's milepost 104.1 and milepost 110.05. HCR states that these designations were not utilized by it in connection with HCR's rail operations.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2004–46; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice and request for comments.

SUMMARY: This document corrects a notice and request for comments that was published in the **Federal Register** on Wednesday, August 11, 2004 (69 FR 48913) that invites the general public and other Federal agencies to comment on proposed and/or continuing information collections.

FOR FURTHER INFORMATION CONTACT: Carol Savage at (202) 622–3945 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice and request for comments that is the subject of these corrections are required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Need for Correction

As published, the comment request for Revenue Procedure 2004–46, contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice and request for comments which was the subject of FR Doc. 04–18374 is corrected as follows:

1. On page 48913, column 1, in the heading, the subject line ''Proposed Collection; Comment Request for Revenue Procedure 2004–45'' is corrected to read ''Proposed Collection; Comment Request for Revenue Procedure 2004–46''.

2. On page 48913, column 1, under the caption ''Summary'', line 13, the language ''Revenue Procedure 2004–45, Relief'' is corrected to read ''Revenue Procedure 2004–46, Relief''.

3. On page 48913, column 2, under the caption ''Supplementary Information'', line 4, the language ''Procedure 2004–45.'' is corrected to read ''Procedure 2004–46.''.

4. On page 48913, column 2, under the caption ''Supplementary Information'', line 5, the language ''Abstract: Revenue Procedure 2004–45'' is corrected to read ''Abstract: Revenue Procedure 2004–46''.

LaNita Van Dyke,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 04–19164 Filed 8–19–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 69, No. 161

Friday, August 20, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA 109–RECLAS; FRL–7800–5]

Finding of Failure to Attain and Reclassification to Serious Nonattainment; Imperial Valley Planning Area; California; Particulate Matter of 10 Microns or Less

Correction

In rule document 04–18378 beginning on page 48792 in the issue of Wednesday, August 11, 2004, make the following correction:

§ 81.305 [Corrected]

On page 48794, in § 81.305, in the table, under the heading ''Classification'', under the subheading ''Date'', ''9/8/04'' should read ''9/10/04''.

[FR Doc. C4–18378 Filed 8–19–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18032; Directorate Identifier 2004–CE–15–AD; Amendment 39–13721; AD 2004–14–12]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc., Models PA–28–161, PA–28–181, PA–28R–201, PA–32R–301 (HP), PA–32R–301T, PA–32–301FT, PA–32–301XTC, PA–34–220T, PA–44–180, PA–46–350P, and PA–46–500TP Airplanes

Correction

In rules document 04–15507 beginning on page 41407 in the issue of Friday, July 9, 2004, make the following corrections:

§39.13 [Corrected]

1. On page 41409, in §30.13, under the heading **What Must I Do to Address This Problem?**, in paragraph (e), in the table, in the first column, in paragraph (i), in the fourth line, the word ''crew'' should read, ''screw''.

2. On the same page, in the same section, in the same table, in the third column, in the first entry, in the second line, ''Service Bulletin No. 1139'' should read, ''Service Bulletin No. 1139A''.

[FR Doc. C4–15507 Filed 8–19–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
August 20, 2004

Part II

Environmental Protection Agency

Performance Partnership Grants; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7803–8]

Performance Partnership Grants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This action adds three grant programs to the list of environmental grant programs eligible for inclusion in Performance Partnership Grants. The programs to be added are: The Environmental Information Exchange Network grant program; the Multimedia Sector Program grant funds; and the Brownfields grant program (CERCLA section 128(a)). See below for specific details on each program being added.

The Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134) and the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1998 (Public Law 105–65), authorize EPA to combine categorical grant funds appropriated in EPA's State and Tribal Assistance Grant (STAG) account and award the funds as Performance Partnership Grants (PPGs). Public Law 104–134, states, in relevant part, that: ''the Administrator is authorized to make grants annually from funds appropriated under this heading, subject to such terms and conditions as the Administrator shall establish, to any State or federally recognized Indian tribe for multimedia or single media pollution prevention, control and abatement and related environmental activities at the request of the Governor or other appropriate State official or the tribe.'' Public Law 105–65 amended the PPG authority by authorizing ''interstate agencies, tribal consortia, and air pollution control agencies'' to receive PPGs. Pursuant to the authority granted in Public Law 104–134 and Public Law 105–65, EPA promulgated PPG regulations in January of 2001 as part of the Agency's revision of 40 CFR part 35, the rules governing categorical environmental program grants. The regulation at 40 CFR 35.133(b) states that: ''The Administrator may, in guidance or regulation, describe subsequent additions, deletions, or changes to the list of environmental programs eligible for inclusion in Performance Partnership Grants.'' The Environmental Information Exchange Network grant program, the Multimedia Sector Program grants, and the CERCLA section 128(a) grant program are all funded in the same line item that funds categorical grants for ''multimedia or single media pollution prevention, control and abatement and related environmental activities'' and, therefore, these grant programs are eligible for inclusion in PPGs. This notice is made pursuant to 40 CFR 35.133(b), to inform entities eligible to receive PPGs that the three programs listed above may be included in a PPG subject to any limitations herein defined.

In the fiscal year 2002 Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, Public Law 107–73, EPA was authorized to award grants for the development of the Environmental Information Exchange Network (EIEN). The EIEN grant authority was also included in EPA's fiscal year 2003 and fiscal year 2004 appropriations, Public Laws 108–7 and 108–199, respectively. Heretofore and hereafter, the EIEN grants are eligible for inclusion in PPGs and may be included in a PPG at the request of the appropriate official of an eligible entity, subject to EPA's regulations at 40 CFR part 31 and 40 CFR 35.001–35.138 and 35.500–35.538.

In the fiscal year 2004 Consolidated Appropriations Act, Public Law 108–199, EPA was authorized to expend categorical grant funds ''for enforcement and compliance assurance grants,'' (H.R. 2673 at H12731), referred to as the Multimedia Sector Program grants. EPA's Office of Enforcement and Compliance Assurance manages the funds for the Multimedia Sector Program to assist states and tribes ''in developing innovative sector-based, multi-media, or single-media approaches to enforcement and compliance assurance.'' (EPA's FY 2004 Justification of Appropriations at SA–33). EPA informed Congress that the Agency expects to award these grants under the following grant authorities: Clean Water Act, Section 104; Federal Insecticide, Fungicide, and Rodenticide Act, Section 20; Clean Air Act, Section 103; Solid Waste Disposal Act, Section 8001; Safe Drinking Water Act, Section 1442; Toxic Substances Control Act, Sections 10 and 28; Marine Protection, Research and Sanctuaries Act, Section 203; and Indian Environmental General Assistance Program Act. (EPA's FY 2004 Justification of Appropriations at SA–33). In addition to these authorities, Congress authorized EPA to award the Multimedia Sector Program grant funds as part of PPGs. Multimedia Sector Program grant funds are hereafter eligible for inclusion in PPGs and may be included in a PPG at the request of the appropriate official of an eligible entity, subject to EPA's regulations at 40 CFR part 31 and 40 CFR 35.001–35.138 and 35.500–35.538.

In the fiscal year 2003 Consolidated Appropriations Resolution, Public Law 108–7, EPA was appropriated funds ''for carrying out section 128[(a)] of CERCLA, as amended.'' Congress also included funds for CERCLA section 128(a) in EPA's fiscal year 2004 appropriations, Public Law 108–199. EPA Regional Offices are authorized to use CERCLA section 128(a) grant funds to implement a pilot program wherein each region may award fiscal year 2004 CERCLA section 128(a) funds in a PPG for one state and one tribe or tribal consortium. A Regional office may include fiscal year 2004 CERCLA section 128(a) grant funds in a PPG for more than one state and one tribe or tribal consortium with prior approval from the Assistant Administrator, Office of Solid Waste and Emergency Response, and the Associate Administrator, Office of Congressional and Intergovernmental Relations. A limited pilot program is being implemented to allow EPA to work effectively with state and tribal counterparts in tailoring the PPG process to the CERCLA section 128(a) grants. The award of CERCLA section 128(a) funds in PPGs is subject to EPA's regulations at 40 CFR part 31 and 40 CFR 35.001–35.138 and 35.500–35.538.

FOR FURTHER INFORMATION CONTACT: Jack Bowles, Office of Congressional and Intergovernmental Relations, Office of the Administrator, Mail Code 1301, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number, 202–564–7178; fax number, 202–501–1545; e-mail address: *bowles.jack@epa.gov.*

Dated: August 16, 2004.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–19152 Filed 8–19–04; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
August 20, 2004

Part III

Department of Education

Notice Inviting Applications for Grants To Support Predoctoral Interdisciplinary Research Training in the Education Sciences for Fiscal Year (FY) 2005; Notice

DEPARTMENT OF EDUCATION

Institute of Education Sciences

[CFDA No. 84.305C]

Notice Inviting Applications for Grants To Support Predoctoral Interdisciplinary Research Training in the Education Sciences for Fiscal Year (FY) 2005

SUMMARY: The Director of the Institute of Education Sciences (Institute) announces a FY 2005 competition for grants to support Predoctoral Interdisciplinary Research Training in the Education Sciences. The Director takes this action under the Education Sciences Reform Act of 2002 (Act), Title I of Public Law 107–279. The intent of these grants is to: Support the development of innovative interdisciplinary training programs for doctoral students interested in conducting applied education research, and to establish a network of training programs that collectively produce a cadre of education researchers willing and able to conduct a new generation of methodologically rigorous and educationally relevant scientific research that will provide solutions to pressing problems and challenges facing American education.

SUPPLEMENTARY INFORMATION: *Mission of Institute:* A central purpose of the Institute is to provide parents, educators, students, researchers, policymakers, and the general public with reliable information about education practices that support learning and improve academic achievement and access to education opportunities for all students. In carrying out its mission, the Institute provides support for programs of research in areas of demonstrated national need.

Eligible Applicants: Applicants that have the ability and capacity to conduct scientifically valid research are eligible to apply. Eligible applicants include, but are not limited to, non-profit and for-profit organizations and public and private agencies and institutions, such as colleges and universities.

Request for Applications and Other Information: Information regarding program and application requirements for this competition is contained in the applicable Request for Applications package (RFA), which will be available on August 19 at the following Web site: *http://www.ed.gov/programs/edresearch/applicant.html.* Interested potential applicants should periodically check the Institute's Web site.

Information regarding selection criteria and review procedures will also be posted at this Web site.

Letter of Intent: A letter indicating a potential applicant's intent to submit an application is optional but encouraged. The letter of intent must be submitted electronically by September 17, 2004, using the instructions provided at the following web site: *http://ies.constellagroup.com/*. Receipt of the letter of intent will be acknowledged by e-mail.

Applications Available: August 19, 2004.

Deadline for Transmittal of Applications: 8 p.m. Eastern Time, November 18, 2004.

Estimated Range of Awards: $500,000 to $1,000,000 per year.

Project Period: Up to 5 years.

Fiscal Information: Although Congress has not enacted a final appropriation for FY 2005, the Institute is inviting applications for this competition now so that it may be prepared to make awards following final action on the Department's appropriations bill. The President's FY 2005 Budget for the Institute includes sufficient funding for this competition. The actual award of grants is pending the availability of funds. The number of awards made under this competition will depend upon the quality of the applications received. The size of the awards will depend upon the scope of the projects proposed.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 77, 80, 81, 82, 84, 85, 86 (part 86 applies only to institutions of higher education), 97, 98, and 99. In addition 34 CFR part 75 is applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217, 75.219, 75.220, 75.221, 75.222, and 75.230.

Performance Measures: To evaluate the overall success of its education research program, the Institute annually assesses the quality and relevance of newly funded research projects, as well as the quality of research publications that result from its funded research projects. Two indicators address the quality of new projects. First, an external panel of eminent senior scientists reviews the quality of a randomly selected sample of newly funded research applications, and the percentage of new projects that are deemed to be of high quality is determined. Second, because much of the Institute's work focuses on questions of effectiveness, newly funded applications are evaluated to identify those that address causal questions and then to determine what percentage of those projects use randomized field trials to answer the causal questions. To evaluate the relevance of newly funded research projects, a panel of experienced education practitioners and administrators reviews descriptions of a randomly selected sample of newly funded projects and rates the degree to which the projects are relevant to educational practice.

Two indicators address the quality of new research publications, both print and web-based, which are the products of funded research projects. First, an external panel of eminent scientists reviews the quality of a randomly selected sample of new publications, and the percentage of new publications that are deemed to be of high quality is determined. Second, publications that address causal questions are identified, and are then reviewed to determine the percentage that employ randomized experimental designs. As funded research projects are completed, the Institute will subject the final reports to similar reviews.

To evaluate impact, the Institute surveys a random sample of K–16 policymakers and administrators once every 3 years to determine the percentage who report routinely considering evidence of effectiveness before adopting educational products and approaches.

Application Procedures: The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

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FOR FURTHER INFORMATION CONTACT: James Griffin, U.S. Department of Education, Institute of Education Sciences, 555 New Jersey Avenue, NW.,

room 611A, Washington, DC 20208. Telephone: (202) 219–2280 or by e-mail: *James.Griffin@ed.gov*

The date on which applications will be available, the deadline for transmittal of applications, the estimated range of awards, and the project period are also listed in the RFA for this competition that will be posted at: *http://www.ed.gov/programs/edresearch/applicant.html*.

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Program Authority: 20 U.S.C. 9501 *et seq.* (the ''Education Sciences Reform Act of 2002'', Title I of Public Law 107–279, November 5, 2002).

Dated: July 17, 2004.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 04–19176 Filed 8–19–04; 8:45 am]

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H.R. 4842/P.L. 108–302
United States-Morocco Free Trade Agreement Implementation Act (Aug. 17, 2004; 118 Stat. 1103)

Last List August 12, 2004

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