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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–64–AD; Amendment 39–13791; AD 97–09–02R3]

RIN 2120–AA64

Airworthiness Directives; CFM International (CFMI) CFM56–5C Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD) for CFMI CFM56–5C series turbofan engines. That AD currently establishes new life limits for certain high pressure turbine rotor (HPTR) front shafts, HPTR front air seals, and booster spools. This action removes the booster spool, part number (P/N) 337–005–210–0, and the HPTR front shaft, P/Ns 1498M40P03, 1498M40P05, and 1498M40P06, from the parts listed with lowered life limits in the existing AD. This amendment results from a life management review completed by the manufacturer. We are issuing this AD to prevent low-cycle fatigue (LCF) failure of certain HPTR front air seals, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective October 14, 2004.

We must receive any comments on this AD by November 8, 2004.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–ANE–64–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

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

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7754; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On March 19, 2003, the FAA issued AD 97–09–02R2, Amendment 39–13094 (68 FR 14312, March 25, 2003). That AD reduces the LCF retirement lives of certain HPTR front shafts, HPTR front air seals, HPTR disks, booster spools, and LPTR stage 3 disks.

Actions Since AD 97–09–02R2 Was Issued

After we issued AD 97–09–02R2, the manufacturer conducted an extensive life management program for the HPTR front shaft and booster spool listed in the AD. The results indicated higher LCF retirement lives for those HPTR front shafts and booster spools than the lives published in AD 97–09–02R2. Those LCF retirement lives are now the same as originally calculated and are in agreement with the current airworthiness limitations section of Chapter 05 of the CFM56–5C Engine Shop Manual, CFMI-TP.SM.8. This AD revision removes HPTR front shafts, part numbers (P/Ns) 1498M40P03, 1498M40P05, and 1498M40P06; and booster spools, P/N 337–005–210–0, from the parts listed with lower LCF retirement lives. The LCF retirement lives of the HPTR front air seals P/N 1523M34P02 and 1523M34P03 remain unchanged.

FAA's Determination and Requirements of This AD

Although no airplanes that are registered in the United States use these affected engine models, the possibility exists these engine models could be used on airplanes that are registered in the United States in the future. This AD requires the LCF retirement lives of HPTR front air seals P/N 1523M34P02 and P/N 1523M34P03 to remain as published in AD 97–09–02R2.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary, and a situation exists that allows the immediate adoption of this regulation.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 95–ANE–64–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Examining the AD Docket

You may examine the AD Docket (including any comments 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.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on

the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 95–ANE–64–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–13094 68 FR 14312, March 25, 2003, and by adding a new airworthiness directive, Amendment 39–13791, to read as follows:

97–09–02R3 CFM International: Amendment 39–13791. Docket No. 95–ANE–64–AD.

Applicability

This airworthiness directive (AD) is applicable to CFM International (CFMI) CFM56–5C2/G, –5C3/G, and –5C4 series turbofan engines. These engines are installed on, but not limited to, Airbus Industrie A340 series airplanes.

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

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent low cycle fatigue (LCF) failure of the high pressure turbine rotor (HPTR) front air seal, which could result in an uncontained failure and damage to the airplane, do the following:

(a) LCF retirement lives for HPTR front shafts, part numbers (P/Ns) 1498M40P03, 1498M40P05, and 1498M40P06, are now the same as originally calculated and are in agreement with the current airworthiness limitations section of Chapter 05 of the CFM56–5C Engine Shop Manual, CFMI–TP.SM.8.

(b) Remove from service HPTR front air seals, P/Ns 1523M34P02 and 1523M34P03, before accumulating 4,000 cycles-since-new, and replace with a serviceable part.

(c) LCF retirement lives for HPTR disks P/N 1498M43P04 are now the same as originally calculated and are in agreement with the current airworthiness limitations section of Chapter 05 of the CFM56–5C Engine Shop Manual, CFMI–TP.SM.8.

(d) LCF retirement lives for booster spools, P/N 337–005–210–0, are now the same as originally calculated and are in agreement with the current airworthiness limitations section of Chapter 05 of the CFM56–5C Engine Shop Manual, CMFI–TP.SM.8.

(e) For CFM56–5C4 engines, LCF retirement lives for low pressure turbine rotor (LPTR) stage 3 disks, P/Ns 337–001–602–0 and 337–001–605–0 are now the same as originally calculated and are in agreement with the current airworthiness limitations section of Chapter 05 of the CFM56–5C Engine Shop Manual, CMFI–TP.SM.8.

(f) For CFM56–5C2/G and –5C3/G engines, LCF retirement lives for LPTR stage 3 disks, P/Ns 337–001–602–0 and 337–001–605–0 are now the same as originally calculated and are in agreement with the current airworthiness limitations section of Chapter 05 of the CFM56–5C Engine Shop Manual, CMFI–TP.SM.8.

(g) This action establishes the new LCF retirement lives stated in paragraphs (a) through (f) of this AD, which are published in Chapter 05 of the CFM56–5C Engine Shop Manual, CMFI–TP.SM.8.

(h) For the purpose of this AD, a serviceable part is one that has not exceeded its respective new life limit as set out in this AD.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

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

Effective Date

(k) This amendment becomes effective on October 14, 2004.

Issued in Burlington, Massachusetts, on September 1, 2004.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–20411 Filed 9–8–04; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''Commission'') amends its Appliance Labeling Rule (''Rule'') by publishing new ranges of comparability to be used on required labels for standard and compact dishwashers. The Commission also announces that the current ranges of comparability for central air conditioners and heat pumps will remain in effect until further notice. The Commission amends the portions of Appendices H (Cooling Performance and Cost for Central Air Conditioners) and I (Heating Performance and Cost for Central Air Conditioners) to reflect the current (2004) Representative Average Unit Cost of Electricity. Finally, the Commission is making a minor correction to the water heater range tables published on July 14, 2004 (69 FR 42107).

DATES: *Effective Date:* The amendments announced in this document will become effective December 8, 2004.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–2889).

SUPPLEMENTARY INFORMATION: The Rule was issued by the Commission in 1979,

44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975 (''EPCA'').[1] The Rule covers several categories of major household appliances including dishwashers and central air conditioners.

The Rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an ''EnergyGuide'' label and in catalogs. The Rule requires manufacturers to include, on labels and fact sheets, an energy consumption or efficiency figure and a ''range of comparability.'' This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule also requires manufacturers to include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.[2] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information on labels consistent with these changes, the Commission will publish new ranges if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

[1] 42 U.S.C. 6294. The statute also requires the Department of Energy (''DOE'') to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for dishwashers are due June 1. Reports for central air conditioners and heat pumps are due July 1.

I. 2004 Dishwasher Ranges

The Commission has analyzed the annual data submissions for dishwashers. The data submissions show a significant change in the ranges of comparability for standard and compact models.[3] Accordingly, the Commission is publishing new ranges of comparability for standard and compact dishwashers in Appendices C1 and C2 of the Rule. The new ranges of comparability for dishwashers supersede the current ranges, which were published on August 11, 2003 (68 FR 47449) (standard dishwashers) and July 19, 2002 (67 FR 47443) (compact dishwashers).

Dishwasher manufacturers must base the disclosures of estimated annual operating cost required at the bottom of EnergyGuide labels for dishwashers on the 2004 Representative Average Unit Costs of Energy for electricity (8.60 cents per kiloWatt-hour) and natural gas (91.0 cents per therm) that were published by DOE on January 27, 2004 (69 FR 3907) and by the Commission on April 30, 2004 (69 FR 23651). The new ranges for standard and compact models will become effective December 8, 2004. Manufacturers may begin using the new ranges before that date.

II. 2004 Central Air Conditioner and Heat Pump Information

The annual submissions of data for central air conditioners and heat pumps have been made to the Commission. The ranges of comparability for central air conditioners and heat pumps have not changed by more than 15% from the current ranges for these products. Therefore, the current ranges for these products, which were published on September 16, 1996 (61 FR 48620), will remain in effect until further notice.

III. Cost Figures for Central Air Conditioner and Heat Pump Fact Sheets

The Commission is amending the cost calculation formulas in Appendices H and I to Part 305 that manufacturers of central air conditioners and heat pumps must include on fact sheets and in directories to reflect this year's energy costs figures published by DOE. These routine amendments will become effective December 8, 2004.

[3] The Commission's classification of ''Standard'' and ''Compact'' dishwashers is based on internal load capacity. Appendix C of the Commission's Rule defines ''Compact'' as including countertop dishwasher models with a capacity of fewer than eight (8) place settings and ''Standard'' as including portable or built-in dishwasher models with a capacity of eight (8) or more place settings. The Rule requires that place settings be determined in accordance with appendix C to 10 CFR Part 430, subpart B, of DOE's energy conservation standards program.

IV. Minor Correction to Appendix D4 Table

The Commission is also publishing a minor correction to Appendix D4 (Water Heaters—Instantaneous—Range Information). As part of recent amendments to the water heater ranges (69 FR 42107 (July 14, 2004)), ''first hour rating'' was inadvertently inserted into Appendix D4 as the applicable capacity descriptor for instantaneous water heaters. The correct descriptor is ''Capacity (maximum flow rate); gallons per minute (gpm).''

V. Administrative Procedure Act

The amendments published in this notice involve routine, technical and minor, or conforming changes to the labeling requirements in the Rule. These technical amendments merely provide a routine change to the range and cost information required on EnergyGuide labels and fact sheets. Accordingly, the Commission finds for good cause that public comment for these technical, procedural amendments is impractical and unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

VI. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. These technical amendments merely provide a routine change to the range information required on EnergyGuide labels. Thus, the amendments will not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act

In a June 13, 1988 notice (53 FR 22106), the Commission stated that the Rule contains disclosure and reporting requirements that constitute ''information collection requirements'' as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act.[4] The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget

[4] 44 U.S.C. 3501–3520.

(''OMB'') and assigned OMB Control No. 3084–0068. OMB has reviewed the Rule and extended its approval for its recordkeeping and reporting requirements until September 30, 2004. The amendments now being adopted do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

■ Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

■ 1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. Appendix C1 to Part 305 is revised to read as follows:

Appendix C1 to Part 305—Compact Dishwashers

Range Information

''Compact'' includes countertop dishwasher models with a capacity of fewer than eight (8) place settings. Place settings shall be in accordance with appendix C to 10 CFR part 430, subpart B. Load patterns shall conform to the operating normal for the model being tested.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Compact ...	176	247

Cost Information

When the above ranges of comparability are used on EnergyGuide labels for compact-sized dishwashers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2004 Representative Average Unit Costs for electricity (8.60¢ per kiloWatt-hour) and natural gas (91.0¢ per therm), and the text below the box must identify the costs as such.

■ 3. Appendix C2 to Part 305 is revised to read as follows:

Appendix C2 to Part 305—Standard Dishwashers

Range Information

''Standard'' includes portable or built-in dishwasher models with a capacity of eight (8) or more place settings. Place settings shall be in accordance with appendix C to 10 CFR part 430, subpart B. Load patterns shall conform to the operating normal for the model being tested.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Standard ...	194	531

Cost Information

When the above ranges of comparability are used on EnergyGuide labels for standard-sized dishwashers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2004 Representative Average Unit Costs for electricity (8.60¢ per kiloWatt-hour) and natural gas (91.0¢ per therm), and the text below the box must identify the costs as such.

■ 4. The table in Appendix D4 to Part 305 is revised to read as follows:

* * * * *

Appendix D4 to Part 305—Water Heaters-Instantaneous-Gas

Range Information

Capacity (maximum flow rate); gallons per minute (gpm)	Range of estimated annual energy consumption (therms/yr. and gallons/ yr.)			
	Natural gas therms/yr.		Propane gallons/yr.	
	Low	High	Low	High
Under 1.00	235	235	256	256
1.00 to 2.00	230	230	252	252
2.01 to 3.00	185	220	196	239
Over 3.00	177	238	187	260

* * * * *

■ 5. In section 2 of Appendix H of Part 305, the text is amended by removing the figure ''8.41¢'' wherever it appears and by adding, in its place, the figure ''8.60¢''. In addition, the text in this section is amended by removing the figure ''12.62¢'' wherever it appears and by adding, in its place, the figure ''12.90¢''. And the formula is revised to read as follows in both places that it appears:

Appendix H to Part 305—Cooling Performance and Cost for Central Air Conditioners

* * * * *

$$\text{Your estimated cost} = \frac{\text{Listed average annual operating cost}*}{} \times \frac{\text{Your cooling load hours}**}{1{,}000} \times \frac{\text{Your electrical rate in cents per KWH}}{8.60¢}$$

* * * * *

■ 6. In section 2 of Appendix I of Part 305, the text is amended by removing the figure ''8.41¢'' wherever it appears and by adding, in its place, the figure ''8.60¢''. In addition, the text and formulas are amended by removing the figure ''12.62¢'' wherever it appears and by adding, in its place, the figure ''12.90¢''. And the formula is revised to read as follows in both places that it appears:

Appendix I to Part 305—Heating Performance and Cost for Central Air Conditioners

* * * * *

$$\text{Your estimated cost} = \text{Listed annual heating cost}* \times \frac{\text{Your electrical cost in cents per KWH}}{8.60¢}$$

* * * * *

■ 7. Appendix L is amended by revising Sample Label 4 of Part 305 to read as follows:

* * * * *

BILLING CODE 6750–01–P

Based on standard U.S. Government tests

ENERGYGUIDE

Dishwasher
Capacity: Standard

XYZ Corporation
Model(s) MR328, XI12, NAA83

Compare the Energy Use of this Dishwasher with Others Before You Buy.

This Model Uses
500kWh/year

Energy use (kWh/year) range of all similar models

Uses Least Energy	Uses Most Energy
194	531

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only standard size dishwashers are used in this scale.

Dishwashers using more energy cost more to operate. This model's estimated yearly operating cost is:

$43	$31
When used with an electric water heater	When used with a natural gas water heater

Based on four wash loads a week using the normal cycle and a 2004 U.S. Government national average cost of 8.60¢ per kWh for electricity and 91.0¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 4

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–20404 Filed 9–8–04; 8:45 am]

BILLING CODE 6750–50–C

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. FHWA–2001–11130]

RIN 2125–AE29

Work Zone Safety and Mobility

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA amends its regulation that governs traffic safety and mobility in highway and street work zones. The changes to the regulation will facilitate comprehensive consideration of the broader safety and mobility impacts of work zones across project development stages, and the adoption of additional strategies that help manage these impacts during project implementation. These provisions will help State Departments of Transportation (DOTs) meet current and future work zone safety and mobility challenges, and serve the needs of the American people.

DATES: *Effective Date:* October 12, 2007.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of October 12, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Battles, Office of Transportation Operations, HOTO–1, (202) 366–4372; or Mr. Raymond Cuprill, Office of the Chief Counsel, HCC–30, (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

This document and all comments received by the U.S. DOT Docket Facility, Room PL–401, may be viewed through the Docket Management System (DMS) at *http://dms.dot.gov*. 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 this Web site.

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Background

History

Pursuant to the requirements of Section 1051 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), (Pub. L. 102–240, 105 Stat. 1914; Dec. 18, 1991), the FHWA developed a work zone safety program to improve work zone safety at highway construction sites. The FHWA implemented this program through non-regulatory action by publishing a notice in the **Federal Register** on October 24, 1995 (60 FR 54562). This notice established the National Highway Work Zone Safety Program (NHWZSP) to enhance safety at highway construction, maintenance, and utility sites. In this notice, the FHWA indicated the need to update its regulation on work zone safety (23 CFR 630, Subpart J).

As a first step in considering amendments to its work zone safety regulation, the FHWA published an advance notice of proposed rulemaking (ANPRM) on February 6, 2002, at 67 FR 5532. The ANPRM solicited information on the need to amend the regulation to better respond to the issues surrounding work zones, namely the need to reduce recurrent roadwork, the duration of work zones, and the disruption caused by work zones.

The FHWA published a notice of proposed rulemaking (NPRM) on May 7, 2003, at 68 FR 24384. The regulations proposed in the NPRM were intended to facilitate consideration and management of the broader safety and mobility impacts of work zones in a more coordinated and comprehensive manner across project development stages, and the development of appropriate strategies to manage these impacts. We received a substantial number of responses to the NPRM. While most of the respondents agreed with the intent and the concepts proposed in the NPRM, they recommended that the proposed provisions be revised and altered so as to make them practical for application in the field. The respondents identified the need for flexibility and scalability in the implementation of the provisions of the proposed rule; noted that some of the terms used in the proposed rule were ambiguous and lent themselves to subjective interpretation. Respondents also commented that the documentation requirements in the proposal would impose undue time and resource burdens on State DOTs.

In order to address the comments received in response to the NPRM, the FHWA issued a supplemental notice of proposed rulemaking (SNPRM) on May 13, 2004, at 69 FR 26513. The SNPRM addressed the comments related to flexibility and scalability of provisions, eliminated ambiguous terms from the language, and reduced the documentation requirements. We received several supportive comments in response to the SNPRM. Most respondents noted that the SNPRM addressed the majority of their concerns regarding the originally proposed rule. However, they did offer additional comments regarding specific areas of concern. In the final rule issued today, the FHWA has addressed all the comments received in response to the SNPRM that are within the scope of this rulemaking

The regulation addresses the changing times of more traffic, more congestion, greater safety issues, and more work zones. The regulation is broader so as to recognize the inherent linkage between safety and mobility and to facilitate systematic consideration and management of work zone impacts. The regulation can advance the state of the practice in highway construction project planning, design, and delivery so as to address the needs of the traveling public and highway workers. The key features of the final rule are as follows:

- A policy driven focus that will institutionalize work zone processes and procedures at the agency level, with specific language for application at the project level.
- A systems engineering approach that includes provisions to help transportation agencies address work zone considerations starting early in planning, and progressing through project design, implementation, and performance assessment.
- Emphasis on addressing the broader impacts of work zones to develop transportation management strategies that address traffic safety and control through the work zone, transportation operations, and public information and outreach.
- Emphasis on a partner driven approach, whereby transportation agencies and the FHWA will work together towards improving work zone safety and mobility.
- Overall flexibility, scalability, and adaptability of the provisions, so as to customize the application of the regulations according to the needs of individual agencies, and to meet the needs of the various types of highway projects.

Summary Discussion of Comments Received in Response to the SNPRM

The following discussion provides an overview of the comments received in response to the SNPRM, and the FHWA's actions to resolve and address the issues raised by the respondents.

Profile of Respondents

We received a total of 33 responses to the docket. Out of the 33 total respondents, 27 were State DOTs; 4 were trade associations; and 2 provided comments as private individuals. The 4 trade associations were namely, the Laborers' Health and Safety Fund of North America (LHSFNA), the American Traffic Safety Services Association (ATSSA), the Associated General Contractors (AGC) of America, and the Institute of Transportation Engineers (ITE). We classified the American Association of State Highway and Transportation Officials (AASHTO) as a State DOT because they represent State DOT interests. The AASHTO provided a consolidated response to the SNPRM on behalf of its member States. Several State DOTs provided their comments individually.

The respondents represented a cross-section of job categories, ranging from all aspects of DOT function, to engineering/traffic/safety/design, to construction and contracting.

Overall Position of Respondents

We received several supportive comments in response to the SNPRM. Most State DOTs, the AASHTO, and all private sector respondents greatly appreciated the FHWA's continued effort to receive input during the development of the proposed rule, and particularly in issuing the SNPRM. Most respondents also noted that the SNPRM addressed the majority of their concerns regarding the originally proposed rule.

The respondents also offered comments on specific areas of concern, and recommended changes to improve the rule's language. The State DOTs and the AASHTO offered comments, which relate to their continued concern that the rule allow for adequate flexibility and scalability while limiting unintended liability and cost. Private sector respondents also offered specific comments on certain areas of concern. Details regarding these issues and FHWA's specific response are discussed in the following section, which provides a section-by-section analysis of the comments.

The level of support for the SNPRM is indicated by the fact that 23 of the 33 respondents expressed overall support for the provisions proposed in the SNPRM. It is to be noted that these respondents were not necessarily supportive of all the provisions, but rather that, their overall position on the SNPRM was supportive. Many of these respondents provided suggestions on modifications and revised language for specific provisions as they deemed appropriate. Of the 23 respondents who were supportive, 21 represented State DOTs and 2 represented trade associations.

Of the remaining respondents, 2 opposed the issuance of the rule, 2 agreed with the intent and the concepts but did not agree with many of the mandatory provisions, and the remaining 6 did not expressly indicate their overall position.

One of the two respondents who opposed the issuance of the rule was the Iowa DOT. It expressed that it supports the goals of improved safety and reduced congestion, but opposes the proposed rule as it would not necessarily help achieve these goals. It believes that its current work zone policies are sufficient to provide for a high standard of safety and mobility. It noted that the rule is not flexible enough, and that it would require significant commitments from its limited staff.

The other respondent that opposed the rule was the Kansas DOT. It suggested that the FHWA retract the rule and, instead, issue the information on work zone safety and mobility as a guide for use by State DOTs. It believes that encouraging State DOTs to review and improve their current practices on work zone safety and mobility, through closer contact with FHWA and other partners, would be more effective than mandating specific processes. It also suggested changes to specific sections, and recommended that the FHWA implement the AASHTO's recommendations, if retraction of the rule was not an option.

Section-by-Section Analysis of SNPRM Comments and FHWA Response

Section 630.1002 Purpose

There were no major comments in response to this section. The overall sentiment of the respondents was supportive of the language as proposed in the SNPRM, and therefore, we will retain the language as proposed in the SNPRM.

Section 630.1004 Definitions and Explanation of Terms

Most respondents were supportive of this section. Some respondents offered specific comments on some of the definitions proposed in the SNPRM. They are discussed as follows:

- Definition for ''Mobility.'' The AGC of America remarked that the definition for mobility seems to imply a greater emphasis on mobility than on safety. It recommended that we change the second sentence of the definition to imply that work zone mobility should be achieved without compromising the safety of highway workers or road users. To address this comment the FHWA has amended the definition by adding the words, ''while not compromising the safety of highway workers or road users'' at the end of the second sentence. In addition, the word ''smoothly'' after the phrase, ''mobility pertains to moving road users,'' has been replaced by the word ''efficiently.''
- Definition for ''Safety.'' The AASHTO and several DOTs recommended that the term, ''road worker(s)'' be changed to ''highway worker(s)'' for the sake of consistency. We agree with this observation, and made this change. The Georgia DOT recommended that the term ''danger'' be changed to ''potential hazards'' to reduce potential liability. We agree with this recommendation, and therefore, replaced the word ''danger'' with ''potential hazards'' in the first sentence. In the second sentence, we rephrased ''minimizing the exposure to danger of road users'' with ''minimizing potential hazards to road users.''
- Definition for ''Temporary Traffic Control (TTC) Plan.'' We moved the definition for the TTC plan from § 630.1004, Definitions and Explanation of Terms, to § 630.1012(b), Transportation Management Plan (TMP), where the requirements for the TTC plan are laid out. This is in response to a comment from the Georgia DOT that the language under the TTC plan section of § 630.1012(b) was not consistent with the Manual On Uniform Traffic Control Devices (MUTCD).[1] Since the definition for the TTC plan was referenced from the MUTCD, it was removed from the definitions section and placed in § 630.1012(b)(1), where TTC plans are discussed.
- Definitions for ''Work Zone'' and ''Work Zone Crash.'' There were several comments recommending changes to certain terminology in both these definitions. For example, the AASHTO

[1] The MUTCD is approved by the FHWA and recognized as the national standard for traffic control on all public roads. It is incorporated by reference into the Code of Federal Regulations at 23 CFR part 655. It is available on the FHWA's Web site at *http://mutcd.fhwa.dot.gov* and is available for inspection and copying at the FHWA Washington, DC Headquarters and all FHWA Division Offices as prescribed at 49 CFR part 7.

and several DOTs suggested that the term, ''traffic units,'' in the first sentence of the Work Zone Crash definition be changed to ''road users.'' However, we have decided not to adopt the changes in order to maintain consistency with other industry accepted sources—the definition for ''work zone'' being referenced from the MUTCD, and that for ''work zone crash,'' from the Model Minimum Uniform Crash Criteria Guideline (MMUCC).[2]

Section 630.1006 Work Zone Safety and Mobility Policy

The majority of the respondents supported the proposed language in this section. The AASHTO and several DOTs recommended the removal of the second clause in the second to last sentence, ''representing the different project development stages.'' These respondents believe that this change would grant the States maximum flexibility to implement the most appropriate team for each project. The FHWA agrees with this observation and has deleted the phrase in question.

The ATSSA recommended that we specifically include or encourage the participation of experienced industry professionals in the multi-disciplinary team referenced in the second to last sentence. The FHWA believes that States will solicit the participation of industry representatives if required for the specific project under consideration.

The Kansas DOT commented that the use of the words ''policy'' and ''guidance'' in the same sentence could be confusing, as policies usually carry more weight than guidance. This comment refers to the second sentence, the first part of which reads, ''This policy may take the form of processes, procedures, and/or guidance * * *'' The FHWA disagrees because we believe that policies do not necessarily have to be mandates. For example, it may be a State DOT policy that it ''shall'' consider and manage work zone impacts of projects, but the actual methods to do so may be provided as guidance to its district/region offices which may vary according to the different types of projects that they encounter. The underlying purpose of the work zone safety and mobility policy section is to require State DOTs to implement a policy for the systematic consideration and management of work zone impacts, so that such consideration and management becomes a part of the mainstream of DOT activities. How a State chooses to implement the policy is its prerogative—and it may take the form of processes, procedures, and/or guidance, and may vary upon the work zone impacts of projects.

The Virginia DOT commented on the second sentence of this section that it does not agree with the ''shall'' requirement to address work zone impacts through the various stages of project development and implementation. It justified its objection by saying that ''addressing work zone impacts through the various stages of project development and implementation'' will not work from a practical standpoint due to unforeseen field conditions and circumstances, and that the shall clause could result in potential litigation. The FHWA disagrees with the Virginia DOT. We would like to mention that the second sentence by itself, when taken out of context, doesn't quite convey the message of the entire section. The preceding sentence and the following sentence need to be considered in interpreting what the second sentence means. The first sentence requires that State DOTs implement a policy for the systematic consideration and management of work zone impacts on all Federal-aid highway projects. The second sentence further qualifies the term ''systematic'' by saying that the policy shall address work zone impacts throughout the various stages of project development and implementation—this implies that the consideration and management of work zone impacts progresses through the various stages. The third sentence further clarifies that the methods to implement this policy may not necessarily be absolute requirements, but rather be implemented through guidance. Further, the third sentence provides a more specific delineator by saying that the implementation of the policy may vary based upon the characteristics and expected work zone impacts of individual projects or classes of projects.

Section 630.1008 Agency-Level Processes and Procedures

The AASHTO and several State DOTs remarked that there is inconsistency with the use of ''Agency'' and ''State Agency,'' and that this needs to be resolved. Further, a few State DOTs sought clarification as to whether ''agency'' applies to the State transportation agency or other entities that might be involved in the project development process (*i.e.*, county and/or local governments and authorities). In response to this comment, we changed all instances of the terms ''State Agency'' and ''Agency'' in the entire subpart to the term ''State,'' as referenced in the rule.

Section 630.1008(a), Section Introduction. There were no specific comments in response to the language in this paragraph. In the second sentence, to remove ambiguity and for clarity, we replaced the words ''well defined data resources'' with the words, ''data and information resources.''

The North Carolina DOT observed that the language in this paragraph is an introduction to the section, and that it should not be labeled as ''(a).'' We did not make this change because the Office of the Federal Register (OFR) requires paragraph designations on all text in a rule.

Section 630.1008(b), Work Zone Assessment and Management Procedures. Most respondents were supportive of the language in this paragraph.

Section 630.1008(c), Work Zone Data. Most State DOTs and the AASHTO opposed the mandatory requirement to use work zone crash and operational data towards improving work zone safety and mobility on ongoing projects, as well as to improve agency processes and procedures. One of the key reasons cited for this opposition was the difficulty and level of effort involved in obtaining and compiling data quickly enough to take remedial action on ongoing projects. A few DOTs also stated that using data to improve State-level procedures was feasible but not at the individual project level. The AASHTO also observed that there is already a reference to data in § 630.1008(e), ''Process Review,'' where the use of data is optional and not mandatory. Some States recommended that we clarify the term ''operational data,'' whether it is observed or collected data. They also noted that the ''shall'' clauses in the first two sentences are inconsistent with the ''encouraged to'' in the last sentence, and questioned as to how the use of data

[2] ''Model Minimum Uniform Crash Criteria Guideline'' (MMUCC), 2d Ed. (Electronic), 2003, produced by National Center for Statistics and Analysis, National Highway Traffic Safety Administration (NHTSA). Telephone 1–(800)–934–8517. Available at the URL: *http://www-nrd.nhtsa.dot.gov*. The NHTSA, the FHWA, the Federal Motor Carrier Safety Administration (FMCSA), and the Governors Highway Safety Association (GHSA) sponsored the development of the MMUCC Guideline which recommends voluntary implementation of the 111 MMUCC data elements and serves as a reporting threshold that includes all persons (injured and uninjured) in crashes statewide involving death, personal injury, or property damage of $1,000 or more. The Guideline is a tool to strengthen existing State crash data systems.

can be mandated when the data resources themselves are optional. The California Transportation Department (CalTrans) questioned the objective of developing TMPs and conducting process reviews if appropriate performance measures and data collection standards are not identified for determining success.

The FHWA provides the following comments and responses to the above stated concerns:

• The purpose of the provisions in this section is not to require States to collect additional data during project implementation, but rather, to improve the use of available work zone field observations, crash data, and operational information to: (1) Manage the safety and mobility impacts of projects more effectively during implementation; and (2) provide the basis for systematic procedures to assess work zone impacts in project development.

For example, most agencies maintain field diaries for constructions projects. These field diaries are intended to provide a log of problems, decisions, and progress made over the duration of a project. In many States, these diaries log incidents and actions such as the need to replace channelization devices into their proper positions after knockdown by an errant vehicle, or to deal with severe congestion that occurred at some point during the day. These log notes, when considered over time, may provide indications of safety or operational deficiencies. To address such deficiencies, it may be necessary and prudent to improve the delineation through the work zone to prevent future occurrences of knockdown events, or to alter work schedules to avoid the congestion that recurs at unexpected times due to some local traffic generation phenomena.

Police reports are another example of an available source of data that may be useful in increasing work zone safety. Provisions are made in many agencies for a copy of each crash report to be forwarded to the engineering section immediately upon police filing of the crash report. Where a work zone is involved, a copy of this report should be forwarded as soon as possible to the project safety manager to determine if the work zone traffic controls had any contribution to the crash so that remedial action can be taken.

These applications do not necessarily require that agencies gather new data, but there may be a need to improve processes to forward such reports to the appropriate staff member for review during project implementation and/or to provide guidance or training to facilitate interpretation of these reports. Agencies may choose to enhance the data they capture to improve the effectiveness of these processes by following national crash data enhancement recommendations and/or linking it with other information (*e.g.*, enforcement actions, public complaints, contractor claims). This same data and information can be gathered for multiple projects and analyzed by the agency to determine if there are common problems that could be remedied by a change in practices. The information may also be used for process reviews.

• The first sentence of this paragraph was revised to convey that States are required to use field observations, available work zone crash data, and operational information at the project level, to manage the work zone impacts of specific projects during project implementation. This provision requires States to use data and information that is available to them, so as to take appropriate actions in a timely manner to correct potential safety or mobility issues in the field. Operational information refers to any available information on the operation of the work zone, be it observed or collected. For example, many areas have Intelligent Transportation Systems (ITS) in place, and many others are implementing specific ITS deployments to manage traffic during construction projects. The application of this provision to a project where ITS is an available information resource, would result in the use of the ITS information to identify potential safety or mobility issues on that project.

• The second sentence was also revised to convey that work zone crash and operational data from multiple projects shall be analyzed towards improving State processes and procedures. Such analysis will help improve overall work zone safety and mobility. Data gathered during project implementation needs to be maintained for such post hoc analyses purposes. Such data can be used to support analyses that help improve State procedures and the effectiveness of future work zone safety and mobility assessment and management procedures.

• The respondents indicated that the use of ''encouraged to'' in the last sentence is inconsistent with the ''shall'' clauses in the first two sentences. Further, the phrase, ''establish data resources at the agency and project levels'' does not clearly convey the message of the provision. This provision does not require States to embark on a massive data collection, storage, and analysis effort, but rather to promote better use of elements of their existing/available data and information resources to support the activities required in the first two sentences. Examples of existing/available data and information resources include: Project logs, field observations, police crash records, operational data from traffic surveillance devices (*e.g.*, data from traffic management centers, ITS devices, *etc.*), other monitoring activities (*e.g.*, work zone speed enforcement or citations), and/or public complaints. We revised the last sentence to convey that States should maintain elements of their data and information resources that logically support the required activities.

• In response to CalTrans' comment regarding establishing performance measures and data collection standards, we appreciate the value of the input, but we believe that we do not have adequate information at this time to specify performance measures for application at the National level. State DOTs may establish such performance measures and data collection standards as applicable to their individual needs and project scenarios. For example, the Ohio-DOT mandates that there shall always be at least two traffic lanes maintained in each direction for any work that is being performed on an Interstate or Interstate look-alike. We believe that such policies need to be developed and implemented according to individual State DOT needs, and hence we maintain a degree of flexibility in the rule language.

Section 630.1008(d), Training. Most State DOTs and the AASHTO opposed the mandatory requirement that would require training for the personnel responsible for work zone safety and mobility during the different project development and implementation stages. These respondents noted that the proposed language implied that State DOTs would be responsible for training all the listed personnel, including those who do not work for the DOT itself, and that this would create a huge resource burden, as well as increase the liability potential for the DOTs. These commenters also ratified their opposition by quoting the MUTCD training requirement, which does not mandate training, but suggests that personnel should be trained appropriate to the job decisions that they are required to make. Some DOTs, including the New York State DOT (NYSDOT), requested that the reference to personnel responsible for enforcement of work zone related transportation management and traffic control be clarified as to whether it refers to law enforcement officers or to field construction/safety inspectors.

The FHWA provides the following comments and responses to the above stated concerns:

• The FHWA agrees that the first sentence in the training section seems to imply that the State would be responsible for training all mentioned personnel; therefore, we changed the sentence to convey that the State shall ''require'' the mentioned personnel be trained. This change will require the State to train direct State employees only, and takes away the burden from the State to train personnel who are not direct employees. We believe that personnel responsible for the development, design, operation, inspection, and enforcement of work zone safety and mobility need to be trained, and this requirement will allow for training to be provided by the appropriate entities. The responsibility of the State would be to require such training, either through policy or through specification. For example, the Florida DOT has developed and required work zone training of their designers and contractors by procedure and by specifications. Similarly, the Maryland State Highway Administration (MD–SHA) provides a maintenance of traffic (MOT) design class to personnel responsible for planning and designing work zones, including consultants and contractors.

• Further, in keeping with the MUTCD language on training, we added the phrase, ''appropriate to the job decisions each individual is required to make'' to the end of the first sentence. This clarifies that the type and level of training will vary according to the responsibilities of the different personnel. For example, Maryland State Highway Police officers attend a 4-hour work zone safety and traffic control session at the Police Academy.

• We also revised the second sentence to convey that States shall require periodic training updates that reflect changing industry practices and State processes and procedures. Since we revised the first sentence to convey that training of non-State personnel is not a State responsibility, in the second sentence, we deleted the phrase, ''States are encouraged to keep records of the training successfully completed by these personnel.''

• In response to the request that ''personnel responsible for enforcement'' of work zone related transportation management and traffic control be clarified, we believe that this group is inclusive of both law enforcement officers and field construction/safety inspectors.

Section 630.1008(e), Process Review. Most respondents were supportive of the language in this section. The AASHTO and several State DOTs recommended that States should have maximum flexibility to implement the most appropriate team for each project. These commenters suggested that the fourth and the fifth sentences of the section be deleted, and that the clause, ''as well as FHWA'' be added to the end of the third sentence.

The FHWA agrees with the observation made by the AASHTO and State DOTs that States should have maximum flexibility to implement the most appropriate review team for each project. Therefore, as suggested, we deleted the fourth and the fifth sentence of the section, and added the clause, ''as well as FHWA'' to the end of the third sentence. Further, in the third sentence, we changed the phrase ''are encouraged to'' to ''should.''

Section 630.1010 Significant Projects

All respondents agreed with the concept of defining significant projects, and the requirement to identify projects that are expected to have significant work zone impacts; however, most State DOTs and the AASHTO opposed the requirement to classify Interstate system projects that occupy a location for more than three days with either intermittent or continuous lane closures, as significant. They cited that all Interstate system projects that occupy a location for more than three days would not necessarily have significant work zone impacts, particularly on low-volume rural Interstate sections. Several DOTs remarked that designation of significant projects purely based on the duration would not be prudent, and that the volume of traffic on that Interstate should be taken into account. They also noted that such classification is not consistent with the MUTCD. They remarked that this provision could not be effectively applied to routine maintenance activities performed by State DOT maintenance crews, and that requesting exceptions to such routine work would be unreasonably arduous.

These respondents also objected to the associated exemption clause for the same provision, commenting that it would be very cumbersome to implement. Some States also requested clarification on whether general exceptions would be granted for work categories for defined segments of Interstate projects where the work would have little impact.

The DOTs of Idaho, Montana, North Dakota, South Dakota, and Wyoming commented that the threshold for designating the reference Interstate projects as significant was too low. They suggested that low volume Interstates and rural Interstates should be excluded, and that, the duration should be extended well above the three-day duration.

The AASHTO and the State DOTs also remarked that the identification of significant projects in ''cooperation with the FHWA'' should be changed to ''in consultation with the FHWA.''

The FHWA provides the following responses and proposed action in response to the referenced concerns:

• We agree with the majority of the concerns raised by the respondents.

• We changed the significant projects clause as applicable to Interstate system projects, to require States to classify as significant projects, all Interstate system projects within the boundaries of a designated Transportation Management Area (TMA), that occupy a location for more than three days with either intermittent or continuous lane closures. We believe that this change addresses all the concerns raised by the respondents. The delineation of projects by the boundaries of a designated TMA will address the work zone impacts of lane-closures on Interstate segments in the most heavily traveled areas with recurring congestion problems. We believe that in general, areas with recurring congestion tend to be severely impacted by lane closures as compared to those without recurring congestion. We also believe that the areas that are already designated as TMAs tend to exhibit patterns of recurring congestion on their Interstates due to heavy traffic demand and limited capacity. This revision, in most cases, would also not require low-volume rural Interstate segments to be classified as significant projects.

• We revised the exemption clause provisions related to the applicable Interstate system projects to allow for exemptions to ''categories of projects.'' This will provide for blanket exemptions for specific categories of projects on Interstate segments that are not expected to have significant work zone impacts. This will eliminate the burdensome procedural aspect of seeking exemptions for Interstate projects on an individual project basis.

• We also reorganized this section to consist of paragraphs (a), (b), (c), and (d). Paragraph (a) provides the general definition for a significant project, with no changes in language from what was proposed in the SNPRM. Paragraph (b) enumerates the purpose of classifying projects as significant, and lays out the requirements for States to classify projects as significant. This language is also the same as what was proposed in the SNPRM. Paragraph (c) provides the revised definition of significant projects

as applicable to Interstate system projects. Paragraph (d) provides the revised exemption clause as applicable to significant projects on the Interstate system.

• In keeping with the overall recommendation of respondents, we changed all instances of ''Agency'' and ''State Agency'' to ''State.''

• We do not agree with the recommendation that the identification of significant projects should be done in ''consultation'' with the FHWA rather than ''cooperation with the FHWA.'' We believe that this is a cooperative process, rather than requiring just consultation. Therefore, we did not make any change to this terminology.

Section 630.1012 Project-Level Procedures

Section 630.1012(a). The North Carolina DOT observed that the language in this section is an introduction to the section, and that it should not be labeled as ''(a).'' We did not make this change because the OFR requires paragraph designations on all text in a rule.

The ITE recommended that the FHWA should encourage consideration of work zone impacts prior to project development, at the corridor and Transportation Improvement Program (TIP) and program development stage. It provided examples of decisions that would be made at the earlier stages, such as, life-cycle cost decisions, and project scheduling decisions. We appreciate ITE's input and agree with the general intent of its suggested content. We believe that the language in §§ 630.1002, Purpose and 630.1010, Significant Projects covers some of the issues to which the ITE refers. Specifically, the following two sentences from the respective sections address the ITE's concerns:

• From § 630.1002, Purpose: ''Addressing these safety and mobility issues requires considerations that start early in project development and continue through project completion.''

• From § 630.1010, Significant Projects: ''This identification of significant projects should be done as early as possible in the project delivery and development process, and in cooperation with the FHWA.''

Section 630.1012(b), Transportation Management Plan (TMP). Most respondents were supportive of the provisions in this section.

The Florida DOT requested further definition for the phrase ''less than significant work zone impacts.'' We believe that the definition for ''work zone impacts'' as provided in § 630.1004 and the clauses for identification of projects with significant work zone impacts, as stated in § 630.1010 adequately describe the phrase ''less than significant work zone impacts.'' We did not take any action in response to this comment.

The New Jersey DOT recommended that, in order to facilitate maximum flexibility to States, the term ''typically'' be introduced before the word ''consists'' in the third sentence of this section. We do not agree with the suggested edit because for significant projects, a TMP shall always consist of a TTC plan, and address Transportation Operations (TO) and Public Information (PI) components, unless an exemption has been granted for that project. We did not take any action in response to this comment.

Section 630.1012(b)(1), Temporary Traffic Control (TTC) Plan. In general, most respondents were supportive of the provisions in this section, except the provision regarding maintenance of pre-existing roadside safety features.

Most State DOTs and the AASHTO were opposed to the provision, which required the maintenance of pre-existing roadside safety features in developing and implementing the TTC plan. They recommended that the FHWA either remove the requirement or change the mandatory ''shall'' to a ''should.''

Several DOTs stated that maintenance of all pre-existing roadside safety features would be very difficult, especially, in urban areas. Other DOTs requested clarification on what ''pre-existing roadside safety features'' would entail—whether it would include items like signs, guardrail, and barriers, or it would include features like shoulders, slopes and other geometric aspects. On that note, several DOTs mentioned that maintenance of pre-existing roadside safety ''hardware'' would be more practical than maintaining pre-existing roadside safety features.

The Laborers Health and Safety Foundation of North America (LHSFNA) continued to stress the requirement for Internal Traffic Control Plans (ITCPs) for managing men and materials within the work area, so as to address worker safety issues better, and to level the playing field for contractors.

The FHWA offers the following in response to the comments and concerns raised above:

• The FHWA agrees with most of the concerns raised by the respondents.

• In the fourth sentence of paragraph (b)(1), we changed the term ''pre-existing roadside safety *features*,'' to ''pre-existing roadside safety *hardware*.'' We believe that this change will address all the concerns raised by the respondents, and eliminate ambiguity and subjectivity from the requirement.

• In response to the LHSFNA's comment regarding ITCPs, we agree that ITCPs are important for providing for worker safety inside the work area, but we still believe that this issue is outside the purview of this rulemaking effort and this subpart.

• In order to be consistent with the remaining sections of this subpart, and to eliminate ambiguity, we deleted the first sentence of this section, and replaced it with the definition for TTC plan as stated in § 630.1004. Consequently, we removed the definition for TTC plan from § 630.1004.

Section 630.1012(b)(2), Transportation Operations (TO) Component. Most respondents were supportive of the provisions in this section. The AASHTO and several DOTs suggested that ''traveler information'' be removed as a typical TO strategy because ''traveler information'' fits more logically in the PI component. The New Jersey DOT recommended that the phrase ''transportation operations and safety *requirements*'' be changed to ''transportation operations and safety *strategies*,'' so as to soften the tone of the language.

We agree with both of the above observations; therefore, we removed ''traveler information'' from the listing of typical TO strategies in the second sentence. We also changed the phrase ''transportation operations and safety *requirements*'' to ''transportation operations and safety *strategies*'' in the last sentence.

Section 630.1012(b)(3), Public Information Component. Most respondents were supportive of the provisions in this section. The AASHTO and several DOTs suggested that ''traveler information'' be included as a typical PI strategy rather than a TO strategy, because ''traveler information'' fits more logically in the PI component. The New Jersey DOT recommended that the phrase ''public information and outreach *requirements*'' be changed to ''public information and outreach *strategies*,'' so as to soften the tone of the language.

We agree with both of the above observations; therefore, we added a new sentence after the first sentence, to indicate that the PI component may include traveler information strategies. We also changed the phrase ''public information and outreach *requirements*'' to ''public information and outreach *strategies*'' in the third sentence.

Section 630.1012(b)(4), Coordinated Development of TMP. Most respondents were supportive of the provisions in this section. The AASHTO and several DOTs

recommended that the terminology, ''coordination and partnership'' in the first sentence, be changed to ''consultation,'' so that it doesn't imply active and direct participation from all the subjects. They explained that the term ''coordination'' implies that all participants have veto/negative powers which may delay project delivery as it is impossible to satisfy everybody. Further, the DOTs of Idaho, Montana, North Dakota, South Dakota, and Wyoming commented that the use of ''*i.e.*'' for the list of stakeholders implies that all those stakeholders are required for all projects. So they recommended that we change the ''*i.e.*'' to ''*e.g.*'' so that it would imply that the list provides examples of possible stakeholders, and that all of them need not be involved in all projects.

The FHWA agrees with both of the above observations and recommendations; therefore, we changed the phrase ''partnership and coordination'' to ''consultation'' in the first sentence of this section. We also changed ''*i.e.*'' to ''*e.g.*'' for the list of stakeholders.

Section 630.1012(c), Inclusion of TMPs in Plans, Specifications, and Estimates (PS&Es). Most respondents were supportive of the provisions in this section. The DOTs of Idaho, Montana, North Dakota, South Dakota, and Wyoming noted that the last sentence in this section could imply that the State shall approve any TMP that is developed by the contractor, irrespective of whether it meets the standards or not. They recommended that the sentence be revised for clarity.

The FHWA agrees with the above observation. We revised the last sentence of this section to convey that contractor developed TMPs shall be subject to the approval of the State, and that the TMPs shall not be implemented before they are approved by the State. This clarifies the language and explicitly states the notion that it is the State that is ultimately responsible for approving any contractor developed TMP.

Section 630.1012(d), Pay Items. Most respondents were supportive of the provisions in this section. However, the ATSAA and the AGC of America opposed the option in § 630.1012(d)(1) for States to use lump sum pay items for implementing the TMPs. The ATSSA believes that unit bid items provide greater specificity and are a better indicator of the direct cost of work zones. Conversely, the use of a lump sum pay item provides less comprehensive data, and may, in some cases, limit, or eliminate the contractor's ability to make a profit on certain projects due to unknown equipment or device requirements either during bidding or project implementation. It cited that unit pay items, especially for the TTC plan, would require that all the identified work zone safety and mobility strategies/equipment/devices be provided for by the contractor. This would level the playing field, and not place conscientious contractors (those who lay emphasis on work zone safety and mobility and include them in their bids) at a disadvantage.

The FHWA recognizes ATSSA's and AGC's concerns, but we believe that States have the required understanding of when to use unit pay items and when not to, and that the requirement for unit pay items on all projects is not practical for real-world application. Therefore, we did not remove the option for DOTs to use lump sum contracting.

We changed ''i.e.'' to ''e.g.'' for the list of possible performance criteria for performance specifications in § 630.1012(d)(2), to remove the implication that the list is an exhaustive list of performance criteria.

Section 630.1012(e), Responsible Persons. Most respondents were supportive of the provisions in this section. A few State DOTs remarked that the terms ''qualified person,'' ''assuring,'' and ''effectively administered,'' in § 630.1012(e) were ambiguous and lent themselves to subjective interpretation.

The FHWA agrees with the above observations. We changed the term ''qualified'' to ''trained,'' as specified in § 630.1008(d) so as to clarify the requirement for the responsible person. We also changed the phrase ''assuring that'' to ''implementing,'' and deleted the phrase, ''are effectively administered.''

Section 630.1014 Implementation

Most respondents were supportive of the provisions in this section. We did not make any changes to the language in this section.

Section 630.1016 Compliance Date

Most respondents were supportive of the provisions in this section. We did not make any changes to the language in this section.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT

Regulatory Policies and Procedures

The FHWA has determined that 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 regulatory policies and procedures.

This final rule is not anticipated to adversely affect, in a material way, any sector of the economy. In addition, these changes will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs; nor will the changes raise any novel legal or policy issues. 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 final rule on small entities and has determined that it will not have a significant economic impact on a substantial number of small entities.

This rule applies to State departments of transportation in the execution of their highway program, specifically with respect to work zone safety and mobility. The implementation of the provisions in this rule will not affect the economic viability or sustenance of small entities, as States are not included in the definition of small entity set forth in 5 U.S.C. 601. For these reasons, the RFA does not apply and the FHWA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This final rule will 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 final rule will 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).

Executive Order 13132 (Federalism)

This 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 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 document 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.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations.

The FHWA has determined that this final rule contains a requirement for data and information to be collected and maintained in the support of design, construction, and operational decisions that affect the safety and mobility of the traveling public related to highway and roadway work zones. This information collection requirement was submitted to and approved by the OMB, pursuant to the provisions of the PRA. In this submission, the FHWA requested the OMB to approve a single information collection clearance for all of the data and information in this final rule. The requirement has been approved, through July 31, 2007; OMB Control No. 2125–0600.

The FHWA estimates that a total of 83,200 burden hours per year would be imposed on non-Federal entities to provide the required information for the regulation requirements. Respondents to this information collection include State Transportation Departments from all 50 States, Puerto Rico, and the District of Columbia. The estimates here only include burdens on the respondents to provide information that is not usually and customarily collected.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that this 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 rulemaking primarily applies to urbanized metropolitan areas and National Highway System (NHS) roadways that are under the jurisdiction of State transportation departments. The purpose of this final rule is to mitigate the safety and mobility impacts of highway construction and maintenance projects on the transportation system, 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 action under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use. We have determined that this is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we believe that the implementation of the final rule by State departments of transportation will reduce the amount of congested travel on our highways, thereby reducing the fuel consumption associated with congested travel. Therefore, the FHWA certifies that a Statement of Energy Effects under Executive Order 13211 is not required.

National Environmental Policy Act

The FHWA has analyzed this action for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347 *et seq.*) and has determined that this action will not have any effect on the quality of the environment. Further, we believe that the implementation of the final rule by State departments of transportation will reduce the amount of congested travel on our highways. This reduction in congested travel will reduce automobile emissions thereby contributing to a cleaner environment.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this final rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not anticipate that this action will 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 action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this 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 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 630

Government contracts, Grant programs—transportation, Highway safety, Highways and roads, Incorporation by reference, Project agreement, Traffic regulations.

Issued on: September 1, 2004.

Mary E. Peters,

Federal Highway Administrator.

■ In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, Part 630, as follows:

PART 630—PRECONSTRUCTION PROCEDURES

■ 1. The authority citation for part 630 continues to read as follows:

Authority: 23 U.S.C. 106, 109, 115, 315, 320, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

■ 2. Revise subpart J of part 630 to read as follows:

Subpart J—Work Zone Safety and Mobility

Sec.

630.1002 Purpose.
630.1004 Definitions and explanation of terms.
630.1006 Workzone safety and mobility policy.
630.1008 State-level processes and procedures.
630.1010 Significant projects.
630.1012 Project-level procedures.
630.1014 Implementation.
630.1016 Compliance date.

§ 630.1002 Purpose.

Work zones directly impact the safety and mobility of road users and highway workers. These safety and mobility impacts are exacerbated by an aging highway infrastructure and growing congestion in many locations. Addressing these safety and mobility issues requires considerations that start early in project development and continue through project completion. Part 6 of the Manual On Uniform Traffic

Control Devices (MUTCD) [1] sets forth basic principles and prescribes standards for the design, application, installation, and maintenance of traffic control devices for highway and street construction, maintenance operation, and utility work. In addition to the provisions in the MUTCD, there are other actions that could be taken to further help mitigate the safety and mobility impacts of work zones. This subpart establishes requirements and provides guidance for systematically addressing the safety and mobility impacts of work zones, and developing strategies to help manage these impacts on all Federal-aid highway projects.

§ 630.1004 Definitions and explanation of terms.

As used in this subpart:

Highway workers include, but are not limited to, personnel of the contractor, subcontractor, DOT, utilities, and law enforcement, performing work within the right-of-way of a transportation facility.

Mobility is the ability to move from place to place and is significantly dependent on the availability of transportation facilities and on system operating conditions. With specific reference to work zones, mobility pertains to moving road users efficiently through or around a work zone area with a minimum delay compared to baseline travel when no work zone is present, while not compromising the safety of highway workers or road users. The commonly used performance measures for the assessment of mobility include delay, speed, travel time and queue lengths.

Safety is a representation of the level of exposure to potential hazards for users of transportation facilities and highway workers. With specific reference to work zones, safety refers to minimizing potential hazards to road users in the vicinity of a work zone and highway workers at the work zone interface with traffic. The commonly used measures for highway safety are the number of crashes or the consequences of crashes (fatalities and injuries) at a given location or along a section of highway during a period of time. Highway worker safety in work zones refers to the safety of workers at the work zone interface with traffic and the impacts of the work zone design on worker safety. The number of worker fatalities and injuries at a given location or along a section of highway, during a period of time are commonly used measures for highway worker safety.

Work zone [2] is an area of a highway with construction, maintenance, or utility work activities. A work zone is typically marked by signs, channelizing devices, barriers, pavement markings, and/or work vehicles. It extends from the first warning sign or high-intensity rotating, flashing, oscillating, or strobe lights on a vehicle to the END ROAD WORK sign or the last temporary traffic control (TTC) device.

Work zone crash [3] means a traffic crash in which the first harmful event occurs within the boundaries of a work zone or on an approach to or exit from a work zone, resulting from an activity, behavior, or control related to the movement of the traffic units through the work zone. This includes crashes occurring on approach to, exiting from or adjacent to work zones that are related to the work zone.

Work zone impacts refer to work zone-induced deviations from the normal range of transportation system safety and mobility. The extent of the work zone impacts may vary based on factors such as, road classification, area type (urban, suburban, and rural), traffic and travel characteristics, type of work being performed, time of day/night, and complexity of the project. These impacts may extend beyond the physical location of the work zone itself, and may occur on the roadway on which the work is being performed, as well as other highway corridors, other modes of transportation, and/or the regional transportation network.

§ 630.1006 Work zone safety and mobility policy.

Each State shall implement a policy for the systematic consideration and management of work zone impacts on all Federal-aid highway projects. This policy shall address work zone impacts throughout the various stages of the project development and implementation process. This policy may take the form of processes, procedures, and/or guidance, and may vary based on the characteristics and expected work zone impacts of individual projects or classes of projects. The States should institute this policy using a multi-disciplinary team and in partnership with the FHWA. The States are encouraged to implement this policy for non-Federal-aid projects as well.

§ 630.1008 State-level processes and procedures.

(a) This section consists of State-level processes and procedures for States to implement and sustain their respective work zone safety and mobility policies. State-level processes and procedures, data and information resources, training, and periodic evaluation enable a systematic approach for addressing and managing the safety and mobility impacts of work zones.

(b) *Work zone assessment and management procedures.* States should develop and implement systematic procedures to assess work zone impacts in project development, and to manage safety and mobility during project implementation. The scope of these procedures shall be based on the project characteristics.

(c) *Work zone data.* States shall use field observations, available work zone crash data, and operational information to manage work zone impacts for specific projects during implementation. States shall continually pursue improvement of work zone safety and mobility by analyzing work zone crash and operational data from multiple projects to improve State processes and procedures. States should maintain elements of the data and information resources that are necessary to support these activities.

(d) Training. States shall require that personnel involved in the development, design, implementation, operation, inspection, and enforcement of work zone related transportation management and traffic control be trained, appropriate to the job decisions each individual is required to make. States shall require periodic training updates that reflect changing industry practices and State processes and procedures.

(e) Process review. In order to assess the effectiveness of work zone safety and mobility procedures, the States shall perform a process review at least every two years. This review may include the evaluation of work zone data at the State level, and/or review of randomly selected projects throughout

[1] The MUTCD is approved by the FHWA and recognized as the national standard for traffic control on all public roads. It is incorporated by reference into the Code of Federal Regulations at 23 CFR part 655. It is available on the FHWA's Web site at *http://mutcd.fhwa.dot.gov* and is available for inspection and copying at the FHWA Washington, DC Headquarters and all FHWA Division Offices as prescribed at 49 CFR part 7.

[2] MUTCD, Part 6, ''Temporary Traffic Control,'' Section 6C.02, ''Temporary Traffic Control Zones.''

[3] ''Model Minimum Uniform Crash Criteria Guideline'' (MMUCC), 2d Ed. (Electronic), 2003, produced by National Center for Statistics and Analysis, National Highway Traffic Safety Administration (NHTSA). Telephone 1–(800)–934–8517. Available at the URL: *http://www-nrd.nhtsa.dot.gov*. The NHTSA, the FHWA, the Federal Motor Carrier Safety Administration (FMCSA), and the Governors Highway Safety Association (GHSA) sponsored the development of the MMUCC Guideline which recommends voluntary implementation of the 111 MMUCC data elements and serves as a reporting threshold that includes all persons (injured and uninjured) in crashes statewide involving death, personal injury, or property damage of $1,000 or more. The Guideline is a tool to strengthen existing State crash data systems.

their jurisdictions. Appropriate personnel who represent the project development stages and the different offices within the State, and the FHWA should participate in this review. Other non-State stakeholders may also be included in this review, as appropriate. The results of the review are intended to lead to improvements in work zone processes and procedures, data and information resources, and training programs so as to enhance efforts to address safety and mobility on current and future projects.

§ 630.1010 Significant projects.

(a) A significant project is one that, alone or in combination with other concurrent projects nearby is anticipated to cause sustained work zone impacts (as defined in § 630.1004) that are greater than what is considered tolerable based on State policy and/or engineering judgment.

(b) The applicability of the provisions in §§ 630.1012(b)(2) and 630.1012(b)(3) is dependent upon whether a project is determined to be significant. The State shall identify upcoming projects that are expected to be significant. This identification of significant projects should be done as early as possible in the project delivery and development process, and in cooperation with the FHWA. The State's work zone policy provisions, the project's characteristics, and the magnitude and extent of the anticipated work zone impacts should be considered when determining if a project is significant or not.

(c) All Interstate system projects within the boundaries of a designated Transportation Management Area (TMA) that occupy a location for more than three days with either intermittent or continuous lane closures shall be considered as significant projects.

(d) For an Interstate system project or categories of Interstate system projects that are classified as significant through the application of the provisions in § 630.1010(c), but in the judgment of the State they do not cause sustained work zone impacts, the State may request from the FHWA, an exception to §§ 630.1012(b)(2) and 630.1012(b)(3). Exceptions to these provisions may be granted by the FHWA based on the State's ability to show that the specific Interstate system project or categories of Interstate system projects do not have sustained work zone impacts.

§ 630.1012 Project-level procedures.

(a) This section provides guidance and establishes procedures for States to manage the work zone impacts of individual projects.

(b) *Transportation Management Plan (TMP).* A TMP consists of strategies to manage the work zone impacts of a project. Its scope, content, and degree of detail may vary based upon the State's work zone policy, and the State's understanding of the expected work zone impacts of the project. For significant projects (as defined in § 630.1010), the State shall develop a TMP that consists of a Temporary Traffic Control (TTC) plan and addresses both Transportation Operations (TO) and Public Information (PI) components. For individual projects or classes of projects that the State determines to have less than significant work zone impacts, the TMP may consist only of a TTC plan. States are encouraged to consider TO and PI issues for all projects.

(1) A TTC plan describes TTC measures to be used for facilitating road users through a work zone or an incident area. The TTC plan plays a vital role in providing continuity of reasonably safe and efficient road user flow and highway worker safety when a work zone, incident, or other event temporarily disrupts normal road user flow. The TTC plan shall be consistent with the provisions under Part 6 of the MUTCD and with the work zone hardware recommendations in Chapter 9 of the American Association of State Highway and Transportation Officials (AASHTO) Roadside Design Guide. Chapter 9 of the AASHTO Roadside Design Guide: ''Traffic Barriers, Traffic Control Devices, and Other Safety Features for Work Zones'' 2002, 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.* The entire document is available for purchase from the American Association of State Highway and Transportation Officials (AASHTO), 444 North Capitol Street, NW., Suite 249, Washington, DC 20001 or at the URL: *http://www.aashto.org/bookstore.* It is available for inspection from the FHWA Washington Headquarters and all Division Offices as listed in 49 CFR Part 7. In developing and implementing the TTC plan, pre-existing roadside safety hardware shall be maintained at an equivalent or better level than existed prior to project implementation. The scope of the TTC plan is determined by the project characteristics, and the traffic safety and control requirements identified by the State for that project. The TTC plan shall either be a reference to specific TTC elements in the MUTCD, approved standard TTC plans, State transportation department TTC manual, or be designed specifically for the project.

(2) The TO component of the TMP shall include the identification of strategies that will be used to mitigate impacts of the work zone on the operation and management of the transportation system within the work zone impact area. Typical TO strategies may include, but are not limited to, demand management, corridor/network management, safety management and enforcement, and work zone traffic management. The scope of the TO component should be determined by the project characteristics, and the transportation operations and safety strategies identified by the State.

(3) The PI component of the TMP shall include communications strategies that seek to inform affected road users, the general public, area residences and businesses, and appropriate public entities about the project, the expected work zone impacts, and the changing conditions on the project. This may include traveler information strategies. The scope of the PI component should be determined by the project characteristics and the public information and outreach strategies identified by the State. Public information should be provided through methods best suited for the project, and may include, but not be limited to, information on the project characteristics, expected impacts, closure details, and commuter alternatives.

(4) States should develop and implement the TMP in sustained consultation with stakeholders (*e.g.*, other transportation agencies, railroad agencies/operators, transit providers, freight movers, utility suppliers, police, fire, emergency medical services, schools, business communities, and regional transportation management centers).

(c) The Plans, Specifications, and Estimates (PS&Es) shall include either a TMP or provisions for contractors to develop a TMP at the most appropriate project phase as applicable to the State's chosen contracting methodology for the project. A contractor developed TMP shall be subject to the approval of the State, and shall not be implemented before it is approved by the State.

(d) The PS&Es shall include appropriate pay item provisions for implementing the TMP, either through method or performance based specifications.

(1) For method-based specifications individual pay items, lump sum payment, or a combination thereof may be used.

(2) For performance based specifications, applicable performance criteria and standards may be used (*e.g.*, safety performance criteria such as number of crashes within the work zone; mobility performance criteria such as travel time through the work zone, delay, queue length, traffic volume; incident response and clearance criteria; work duration criteria).

(e) Responsible persons. The State and the contractor shall each designate a trained person, as specified in § 630.1008(d), at the project level who has the primary responsibility and sufficient authority for implementing the TMP and other safety and mobility aspects of the project.

§ 630.1014 Implementation.

Each State shall work in partnership with the FHWA in the implementation of its policies and procedures to improve work zone safety and mobility. At a minimum, this shall involve an FHWA review of conformance of the State's policies and procedures with this regulation and reassessment of the State's implementation of its procedures at appropriate intervals. Each State is encouraged to address implementation of this regulation in its stewardship agreement with the FHWA.

§ 630.1016 Compliance Date.

States shall comply with all the provisions of this rule no later than October 12, 2007. For projects that are in the later stages of development at or about the compliance date, and if it is determined that the delivery of those projects would be significantly impacted as a result of this rule's provisions, States may request variances for those projects from the FHWA, on a project-by-project basis.

[FR Doc. 04–20340 Filed 9–8–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–155]

RIN 1625–AA08

Special Local Regulations for Marine Events; Hampton River, Hampton, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.508 during the Hampton Bay Days Festival to be held September 10–12, 2004, on the waters of the Hampton River at Hampton, Virginia. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the festival events. The effect will be to restrict general navigation in the regulated area for the safety of event participants, spectators and vessels transiting the event area.

DATES: 33 CFR 100.508 will be enforced from 12 p.m. e.d.t. on September 10, 2004 through 6 p.m. e.d.t. on September 12, 2004.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket CGD05–04–155 and are available for inspection or copying at Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, VA 23703–2199.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Michael Bowling, at (757) 483–8521.

SUPPLEMENTARY INFORMATION: Hampton Bay Days, Inc. will sponsor the Hampton Bay Days Festival on September 10–12, 2004 on the Hampton River, Hampton, Virginia. The festival will include water ski demonstrations, personal watercraft and wake board competitions, paddle boat races, classic boat displays, fireworks displays and a helicopter rescue demonstration. A fleet of spectator vessels is expected to gather nearby to view the festival events. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.508 will be enforced for the duration of the festival activities. Under provisions of 33 CFR 100.508, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may enter and anchor in the special spectator anchorage areas if they proceed at slow, no wake speed. The Coast Guard Patrol Commander will allow vessels to transit the regulated area between festival events. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: August 19, 2004.

Ben R. Thomason, III,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 04–20454 Filed 9–8–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–114]

Drawbridge Operation Regulations: Fore River, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Casco Bay Bridge, mile 1.5, across the Fore River between Portland and South Portland, Maine. This temporary deviation allows the bridge owner to require a four-hour advance notice for bridge openings from September 7, 2004 through November 5, 2004. Additionally, this deviation also allows the bridge to remain in the closed position, Monday through Friday, 9 p.m. to 5 a.m. from September 13, 2004 through October 1, 2004, and again, Monday through Friday, 6 a.m. to 6 p.m. from October 4, 2004 through October 22, 2004. This temporary deviation is necessary to facilitate structural modifications at the bridge.

DATES: This deviation is effective from September 7, 2004 through November 5, 2004.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The bridge owner, Maine Department of Transportation, requested a temporary deviation from the drawbridge operating regulations to facilitate structural modifications designed to improve reliability of the operating system at the bridge. The Coast Guard coordinated these requested closures with the mariners that normally use this waterway in order to minimize any disruption to the marine transit system.

Under this temporary deviation a four-hour advance notice for bridge openings shall be required from September 7, 2004 through November 5,

2004. Additionally, the bridge may also remain in the closed position, Monday through Friday, 9 p.m. to 5 a.m. from September 13, 2004 through October 1, 2004, and again, Monday through Friday, 6 a.m. to 6 p.m. from October 4, 2004 through October 22, 2004.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: August 25, 2004.

David P. Pekoske,

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

[FR Doc. 04–20457 Filed 9–8–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–04–170]

RIN 1625–AA00

Safety Zone; Delaware River

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone from the north end of Pier 80 to the south end of Pier 84. The safety zone extends 50 yards eastward from the pier faces to the channel in the Delaware River, Philadelphia, PA. The temporary safety zone prohibits persons or vessels from entering within 50 yards from the north end of Pier 80 to the south end of Pier 84 on the Delaware River, unless authorized by the Captain of the Port Philadelphia, PA or designated representative. This safety zone is necessary to provide for the safety of life, property and to facilitate commerce.

DATES: This section is effective from August 26, 2004, to October 1, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–04–170 and are available for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Kevin Sligh or Ensign Jill Munsch, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM and delaying its effective date would be contrary to public interest, since immediate action is needed to protect mariners against potential hazards associated with debris on the Delaware River.

Backgroud and Purpose

On August 20, 2004, at 12:15 p.m. approximately 200 linear feet of Pier 80's eastern seawall collapsed into the Delaware River depositing debris into the western edge of the navigable channel. On August 25, 2004, at 5 p.m. approximately 90 linear feet of Pier 84's north apron was deposited into the Delaware River.

The purpose of this regulation is to promote maritime safety, and to protect the environment and mariners transiting the area from submerged objects and debris. Mariners should be aware that barges will be on site for the duration of the debris removal. This rule establishes a safety zone, from the north end of Pier 80 to the south end of Pier 84 extending 50 yards out into the channel of the Delaware River in Philadelphia, PA. Mariners traveling in the vicinity of the safety zone should maintain a minimum safe speed, in accordance with the Navigation Rules as seen in 33 CFR Chapter I, Subchapters D and E. The safety zone will protect mariners transiting the area from the potential hazards associated with debris in the Delaware River. The Captain of the Port will notify the maritime community, via marine broadcasts, while the safety zone is enforced.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

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

The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C 605(b)) that this rule will not have a significant impact on a substantial number of small entities. If you think your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies, and how and to what degree this rule would economically effect it.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–743–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this rule under Executive Order 12211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T05–170 to read as follows:

§ 165.T05–170 Safety Zone; Delaware River

(a) *Location.* The following area is a temporary safety zone: All waters and adjacent shoreline of the Delaware River encompassed from the north end Pier 80 to south end of Pier 84 extending out 50 yards into the channel.

(b) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(2) All persons desiring to transit through the safety zone must contact the Captain of the Port at telephone number (215) 271–4807 or on VHF channel 13 or 16 to seek permission prior to transiting the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port Philadelphia, PA or designated representative.

(3) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF-FM marine band radio, channel 22 (157.1 MHZ).

(4) Mariners transiting in the vicinity of the safety zone should maintain the minimum safe speed necessary to maintain navigation.

(c) *Definition.* For the purpose of this section, *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia to act on his or her behalf.

(d) *Effective period.* This section is effective from August 26, 2004 to October 1, 2004.

Dated: August 26, 2004.

Jonathon D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 04–20455 Filed 9–8–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA155–5081a; FRL–7809–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; NO_X RACT Determinations for Two Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the

Virginia State Implementation Plan (SIP). The revisions consist of determining the reasonably available control technology (RACT) for the control of nitrogen oxides (NO_X) from two individual sources located in Fairfax County, Virginia; namely, the Central Intelligence Agency, and the National Reconnaissance Office. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on November 8, 2004, without further notice, unless EPA receives adverse written comment by October 12, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by VA155–5081 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *morris.makeba@epa.gov.*

C. Mail: Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. VA155–5081. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 19 and 21, 2004, the Commonwealth of Virginia submitted formal revisions to its State Implementation Plan (SIP). The SIP revisions consist of RACT determinations for the control of NO_X from two individual sources located in Fairfax County, Virginia: (1) The Central Intelligence Agency, and (2) the National Reconnaissance Office.

II. Summary of SIP Revision

The following identifies the individual permit conditions for implementing RACT.

A. The Central Intelligence Agency, Registration No. 71757

The Central Intelligence Agency (CIA) operates stationary sources of air pollution at the George Bush Center for Intelligence (formerly known as CIA Headquarters compound) located in Mclean, Fairfax County, Virginia. The Virginia Department of Environmental Quality (VADEQ) submitted a permit for CIA to implement RACT requirements for the following units: (a) Two Keeler natural gas/distillate oil fired boilers (Boilers 002 and 003) each with a maximum heat input capacity of 62.5 million Btu/hour; (b) one Cleaver Brooks natural gas/distillate oil fired boiler (Boiler 004) with a maximum heat input capacity of 31.0 million Btu/hour; (c) one Nebraska Industrial natural gas/distillate oil fired boiler (Boiler 005) with a maximum heat capacity of 62.5 million Btu/hour; (d) seven diesel fuel oil fired turbine generators (Generators 007 through 013) each with a maximum heat input capacity of 45.7 million Btu/hour, and (e) two Superior Boilerworks, waste heat recovery natural gas fired boilers (Boilers 041C and 041D) with a maximum heat input capacity of 17.5 million Btu/hour each. Test ports shall be provided when requested in accordance with the applicable performance specification in 40 CFR Part 60, Appendix A.

Boilers (Emissions Units 002, 003, 004, and 005)

Initial performance tests shall be conducted for NO_X on the dual fueled boilers (Boilers 002 and 004) to determine compliance with the emission limits. Tests shall be conducted and reported and data reduced as set forth in 9 VAC 5–50–30, and the test procedures contained in each applicable section or subpart listed in 9 VAC 5–50–410. The details of the tests are to be arranged with VADEQ. The facility shall submit an original copy of the test protocol at least 30 days prior to testing. NO_X emissions from each dualed boiler (Boilers 002, 003, 004, and 005) shall not exceed 0.25 pounds/MMBtu. Compliance with the emission limit shall be demonstrated as provided in the initial performance testing no later than November 1, 2005. The approved fuels for the four dual fueled boilers (Boilers 002, 003, 004, and 005) are: (1) Natural gas with a minimum heat content of 1000 Btu/cf higher heating value (HHV); and (2) distillate oil that meets the ASTM specification for number 1 or 2 fuel oil with a 0.5 percent maximum sulfur content per shipment, and minimum heat content of 138,000 Btu/gallon.

Turbine Generators (Emission Units 007–013)

The approved fuel for the diesel fired generators (Generators 007–013 or 7 units) is diesel fuel oil that meets the ASTM specification for number 1 or 2 fuel oil with a 0.5 percent maximum sulfur content per shipment. The NO_X emissions from these seven diesel fired turbine generators shall not exceed the following: 188 ppmdv corrected to 15 percent oxygen; 35.5 pounds/hour for each units, and 37.5 tons/year for all 7 units. Compliance with the concentration and pound/hour limit shall be demonstrated as provided in the initial performance testing no later than November 1, 2005. The seven units shall not operate more than 2,100 combined hours per year, calculated monthly as the sum of the previous consecutive twelve-month period. Initial performance tests shall be conducted for NO_X on the seven diesel-fired turbine generators to determine compliance with the emission limits. Tests shall be conducted and reported and data reduced as set forth in 9 VAC 5–50–30, and the test procedures

contained in each applicable section or subpart listed in 9 VAC 5–50–410. The details of the tests are to be arranged with VADEQ. The facility shall submit a test protocol at least 30 days prior to testing.

Heat Recovery Boilers (Emission Units 041C and 041D)

The approved fuel for the heat recovery boilers (Boilers 041C and 041D) is natural gas with a minimum heat content of 1000 Btu/cf HHV. When firing natural gas, the NO_X emissions (in combination) from the heat recovery boilers shall not exceed the following: (1) 0.20 pounds/MMBtu (each); (2) 7 pounds/hour (combined); and (3) 30.66 tons/year (combined). Compliance with the pound/MMBtu and pound/hour emission limits shall be demonstrated as provided in the initial performance testing no later than November 1, 2005. Initial performance tests shall be conducted for NO_X on the heat recovery boilers to determine compliance with the emission limits. Tests shall be conducted and reported and data reduced as set forth in 9 VAC 5–50–30, and the test methods and procedures contained in each applicable section or subpart listed in 9VAC 5–50–410. The details of the tests are to be arranged with VADEQ. The facility shall submit an original copy of the test protocol at least 30 days prior to testing. An original and two copies of the test results shall be submitted to VADEQ within 45 days after the test completion and shall conform to the test report format provided by VADEQ.

Facility Wide Conditions

1. *On-Site Records.* The facility shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. These records shall include, but are not limited to the following:

a. The total amount of NO_X emitted from the facility, calculated monthly as the sum of the previous consecutive twelve months.

b. Annual consumption of distillate oil and hours of operation for the diesel fuel oil fired turbine generators (Generators 007–013) in gallons, calculated monthly as the sum of the previous twelve month period.

c. Annual consumption of natural gas in cubic feet, and distillate oil, for each fuel burning unit along with the associated emissions for each unit shall be calculated monthly as the sum of the previous consecutive twelve month period.

d. The name of the fuel supplier.

e. The date on which the distillate fuel oil was received.

f. The volume of distillate fuel oil delivered in the shipment.

g. A statement that the diesel fuel oil complies with the American Society for Testing and Materials (ASTM) specifications D975–02 for numbers 1 or 2 low sulfur diesel fuel oil.

h. A statement that the sulfur content is less than or equal to that allowed for type of fuel.

i. The sulfur content of the diesel fuel oil.

j. The steps taken for tuning the diesel fired turbine generators and the results of the tuning.

These records shall be available for inspection by VADEQ and shall be current for the most recent five years.

B. The National Reconnaissance Office, Registration No. 71988

Boeing Service Company (BSC) operates the National Reconnaissance Office (NRO) in Chantilly, Virginia. This facility is located in Westfields Business Park, Fairfax County. VADEQ submitted a permit for NRO to implement RACT requirements for five emergency and peak shaving diesel engine driven electrical generators (emission units GS–1 through GS–5). Each emission unit burns No. 2 diesel fuel oil and has a maximum rating of 1600 KW electrical output, normal rating of 2304 horsepower at 1800 RPM and 16.1 MMBtu/hour heat input. Test ports shall be provided when requested in accordance with the applicable performance specification in 40 CFR part 60, Appendix A.

Diesel Engine Electrical Generators (Emission Units GS–1 through GS–5)

Four initial performance tests shall be conducted on two of the five emission units (GS–1 through GS–5) to determine the NO_X emission rate of the engines. The facility shall conduct the tests to determine compliance with the NO_X emission limits by November 1, 2005. One performance test for each emission tested shall be conducted while the generator is operated at 50 to 75 percent of maximum load and the second performance test for each emission tested shall be performed while the generator is at 90 percent load or greater. Tests shall be conducted and reported and data reduced as set forth in 9 VAC 5–50–30 using an appropriate EPA Reference Test Method. The schedule for testing is to be arranged with VADEQ. The facility shall submit an original and one copy of a test protocol at least 30 days prior to testing. An original and two copies of the test results shall be submitted to VADEQ within 45 days after test completion and shall conform to the test report format provided by VADEQ. During the performance tests, the facility shall collect engine parametric operating data and to correlate the data to actual NO_X emissions. The facility shall also prepare a report, which provides the parametric data collected, the correlation to NO_X emissions, and the selection of appropriate operating ranges for each parametric operating parameter. The report shall be submitted to VADEQ along with the test report.

NO_X emissions from each No. 2 diesel fuel oil engine driven electric generator (GS–1 through GS–5) shall not exceed 39.6 pounds NO_X/hour/engine. Compliance shall be demonstrated by a one time NO_X emission test on two of the diesel engine/generator units, and by the proper operation and maintenance of each emission unit. The approved fuels for the five engine driven electric generators is No. 2 diesel fuel oil which meets the ASTM specification for number 1 or 2 fuel oil.

NO_X emissions from the five diesel engine/generator units shall be controlled by fuel injection set at three degrees retarded timing. The engines shall be provided with adequate access for inspection. Compliance shall be demonstrated by determining the timing of each engine on an annual basis, if maintenance has been performed on that engine.

Facility Wide Conditions

1. *On-Site Records.* The facility shall maintain records of emission data and operating parameters for emission units GS–1 through GS–5 as necessary to demonstrate compliance with this permit. These records shall include, but are not limited to the following:

a. Date of each engine timing determination, timing of each engine, and documentation of any corrective action including adjustment of engine timing.

b. Date of maintenance and documentation of any corrective action taken during emission unit maintenance.

c. The name of the No. 2 diesel fuel oil supplier.

d. The date on which No. 2 diesel fuel oil was received.

e. The volume of No. 2 diesel fuel oil delivered in each shipment.

f. A certification that the delivered fuel meets the ASTM specification for No. 2 diesel fuel oil.

These records shall be available for inspection by VADEQ and shall be current for the most recent five years.

III. EPA's Evaluation of the SIP Revisions

EPA is approving these SIP submittals because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT. The Commonwealth has also imposed recordkeeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a State agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a State audit privilege and immunity law can affect only State enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the State plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, State audit privilege or immunity law.

V. Final Action

EPA is approving revisions to the Commonwealth of Virginia's SIP which establish and require RACT for the two major sources of NO_X listed in this document. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on November 8, 2004, without further notice unless EPA receives adverse comment by October 12, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for two named sources located in Fairfax County, Virginia, namely, the Central Intelligence Agency, and the National Reconnaissance Office.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve NO_X RACT determinations for two specific sources located in Fairfax County, Virginia must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 26, 2004.

Richard J. Kampf,

Acting Regional Administrator.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (d) is amended by adding entries for ''Central Intelligence Agency (CIA), George Bush Center for Intelligence'' and ''National Reconnaissance Office, Boeing Service Center'' at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED VIRGINIA SOURCE-SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
* *	* *	*	* *	*
Central Intelligence Agency (CIA), George Bush Center for Intelligence.	Registration No. 71757	04/16/04 ..	[Insert **Federal Register** page number where the document begins], 09/09/04.	52.2420(d).
National Reconnaissance Office, Boeing Service Center.	Registration No. 71988	04/16/04 ..	[Insert **Federal Register** page number where the document begins], 09/09/04.	52.2420(d).

[FR Doc. 04–20132 Filed 9–8–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA156–5082a; FRL–7809–7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; NO_X RACT Determinations for Prince William County Landfill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Virginia State Implementation Plan (SIP). The revision consists of a reasonably available control technology (RACT) determination, contained in an operating permit for the control of nitrogen oxides (NO_X) from Prince William County Landfill, Registration No. 72340, located in Prince William County, Virginia. EPA is approving

these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on November 8, 2004, without further notice, unless EPA receives adverse written comment by October 12, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by VA156–5082 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *morris.makeba@epa.gov.*

C. Mail: Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. VA156–5082. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Commonwealth of Virginia, Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Betty Harris, (215) 814–2168, or by e-mail at *harris.betty@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 23, 2004, the Commonwealth of Virginia submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a RACT determination, contained in a permit to operate, for the control of NO_X from Prince William County Landfill, Registration No. 72340, located in Prince William County, Virginia.

II. Summary of SIP Revision

Prince William County Landfill, Registration No. 72340

Prince William County Landfill, located in Prince William County, Virginia operates a municipal solid waste landfill. The Virginia Department of Environmental Quality (VADEQ) submitted a permit to operate for the landfill. This permit implements RACT requirements for the following: (a) Two (2) Caterpillar Model 3516 Inter-cooled Turbo-Charged Lean Burn Engines with Air-to-Fuel Controllers, each rated at 1340 BHp and (b) One (1) LFG Specialties Model EF8.545I10 Enclosed Flare rated at 2000 scfm. The landfill equipment shall be constructed so as to allow for emissions testing upon reasonable notice at any time, using appropriate methods. Test ports shall be provided when requested in accordance with the applicable performance specification in 40 CFR part 60, Appendix A.

Emission Controls

Emissions of NO_X from the two Caterpillar engines shall be controlled through the use of spark-ignited, inter-cooled, turbo-charged lean burn internal combustion engines with automatic air to fuel ratio control. Emissions of NO_X from the LFG Specialties enclosed flare shall be controlled by maintaining a retention time of at least 0.6 seconds, a minimum temperature of 1400 °F, auto combustion air control, automatic shutoff gas valve, and automatic re-start system. All control devices shall be provided with adequate access for inspection and shall be in operation when the engines and flare are operating.

Monitoring Devices

The Caterpillar engines shall be equipped with a device to continuously measure and record the temperature in the exhaust manifold. The enclosed flare shall be equipped with a device to continuously measure and record the combustion temperature in the flare. Each monitoring device shall be installed, maintained, calibrated and operated in accordance with approved procedures which shall include, as a minimum, the manufacturer's written requirements or recommendations. Each monitoring device shall be provided with adequate access for inspection and shall be in operation when the engines and/or the enclosed flare are operating.

Emission Limits

NO_X emissions from the operation of each of the two Caterpillar engines shall not exceed 1.2 g/Bhp-hr. NO_X emissions from the operation of the LFG Specialties enclosed flare shall not exceed 0.06 lb/MMBtu.

Compliance Demonstration

Initial performance tests shall be conducted for NO_X on each of the Caterpillar engines and the enclosed flare to determine compliance with the emission limits. The facility shall demonstrate compliance by November 1, 2005. Tests shall be conducted and reported and data reduced as set forth in 9 VAC 5–50–30, and the test methods and procedures contained in each applicable section or subpart listed in 9 VAC 5–50–410.

On Site Records

The landfill shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. These records shall include, but not limited to: (a) The total amount of NO_2, emitted from the facility, calculated monthly as the sum of each consecutive 12 month period, (b) annual throughput of landfill gas to the engines and the flare, calculated monthly as the sum of each consecutive 12 month period, (c) monthly hours of operation and maintenance performed upon each of the engines and the flare, (d) the manufacturer's documentation for the operation, maintenance and specifications as required. These records shall be available for inspection by VADEQ and shall be current for the most recent 5 years.

III. EPA's Evaluation of the SIP Revisions

EPA is approving this SIP submittal because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT. The Commonwealth has also imposed recordkeeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information: (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a State agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only State enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the State plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, State audit privilege or immunity law.

V. Final Action

EPA is approving revisions to the Commonwealth of Virginia's SIP which establish and require NO_X RACT for Prince William County Landfill. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on November 8, 2004, without further notice unless EPA receives adverse comment by October 12, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power

and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for Prince William County Landfill located in Prince William County, Virginia.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 26, 2004.

Richard J. Kampf,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

■ 2. Section 52.2420, the table in paragraph (d) is amended by adding the entry for Prince William County Landfill at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED VIRGINIA SOURCE-SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
* *	* *	*	*	*
Prince William County Landfill	Registration No. 72340	04/16/04	[Insert **Federal Register** page number where the document begins], 09/09/04.	52.2420(d).

[FR Doc. 04–20130 Filed 9–8–04; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 5, 25 and 97

[IB Docket 02–54; FCC 04–130]

RIN 3060–A106

Mitigation of Orbital Debris

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (Commission or FCC) adopts a Second Report and Order that amends the Commission's rules to minimize the amount of orbital debris created by satellite systems and to mitigate the effects of orbital debris on operational spacecraft. Orbital debris consists of man-made objects that are not functioning spacecraft. Although orbital debris currently poses little short-term risk to operational spacecraft, an increase in orbital debris could have a significant impact in the long term on space activities, including important satellite communications. Adoption of these rules will help preserve the United States' continued affordable access to space, the continued provision of reliable U.S. space-based services—including communications and remote sensing satellite services for U.S. commercial, government, and homeland security purposes—as well as the continued safety of persons and property in space and on the surface of the Earth. Adoption of these rules will also further the domestic policy objective of the United States to minimize the creation of orbital debris and is consistent with international policies and initiatives to achieve this goal.

DATES: Effective October 12, 2004, except for §§ 5.63(e), 25.114(d)(14), and 97.207(g) which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. Written comments on the Paperwork Reduction Act proposed

information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before November 8, 2004.

ADDRESSES: In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted 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*, and to Kristy L. LaLonde, OMB Desk Office, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to *Kristy_L.LaLonde@omb.eop.gov,* or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Stephen Duall, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418–1103, or via the Internet at *Stephen.Duall@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order in IB Docket No. 02–54, FCC 04–130, adopted June 9, 2004 and released June 21, 2004. The complete text of this Second Report and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This 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) 488–5300, facsimile (202) 488–5563 or via e-mail at FCC@BCPIWEB.COM. It is also available on the Commission's Web site at *http://www.fcc.gov.*

Paperwork Reduction Act Analysis: This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act (PRA) of 1995, Pub. L. 104–13. Public and agency comments are due November 8, 2004. Comments should address: (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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' This publication and comment period supersedes the publication and comment period that was published in the **Federal Register** on July 21, 2004, 69 FR 45714.

OMB Control Number: 3060–1013.

Title: Mitigation of Orbital Debris.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 50.

Estimated Time per Response: 5 hours.

Frequency of Response: One time reporting requirement and third party requirement.

Total Annual Burden: 135 hours.

Total Annual Cost: $36,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is revising this information collection to reflect the new and/or modified information collection requirements that resulted from the Second Report and Order, ''In the Matter of Mitigation of Orbital Debris.'' This Second Report and Order was released by the Commission on June 21, 2004. The Commission amended parts 5, 25, and 97 of the Commission's rules by adopting new rules concerning mitigation of orbital debris. Orbital debris consists of artificial objects orbiting the earth that are not functional spacecraft. Adoption of these rules will help preserve the United States' continued affordable access to space, the continued provision of reliable U.S. space-based services—including communications and remote sensing satellite services for U.S. commercial, government, and homeland security purposes—as well as the continued safety of persons and property in space and on the surface of the earth. Under the rules as amended today, a satellite system operator requesting FCC space station authorization, or an entity requesting a Commission ruling for access to a non-U.S.-licensed space station under the FCC's satellite market access procedures, must submit an orbital debris mitigation plan to the Commission regarding spacecraft design and operation in connection with its request. This Second Report and Order provides guidance for the preparation of such plans. The Commission also adopted requirements concerning the post-mission disposal of Commission-licensed space stations operating in or near the two most heavily used orbital regimes, low-earth orbit (LEO), and geostationary-earth orbit (GEO). Adoption of these rules will further the domestic policy objective of the United States to minimize the creation of orbital debris and is consistent with international policies and initiatives to achieve this goal.

The information collection requirements accounted for in this collection are necessary to mitigate the potential harmful effects of orbital debris accumulation. Without such information collection requirements, the growth in the orbital debris may limit the usefulness of space for communications and other uses in the future by raising the costs and lowering the reliability of space-based systems.

Regulatory Flexibility Analysis: As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking in the Matter of Mitigation of Orbital Debris (Orbital Debris Notice).[2] The Commission sought written public comment on the proposals in the Orbital Debris Notice, including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

Need for, and Objectives of, the Proposed Rules: Orbital debris consists of artificial objects orbiting the Earth that are not functional spacecraft. Since human activity in space began, there has been a steady growth in the number and total mass of orbital debris. The risks presented by orbital debris consist primarily of the risk of collisions between orbital debris and functional spacecraft, and the risk of damage to persons and property on the surface of the Earth in cases where a debris object

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] *See* Mitigation of Orbital Debris, Notice of Proposed Rulemaking, IB Docket No. 02–54, FCC 02–80, 17 FCC Rcd 5586, 5613 (2002).

[3] *See* 5 U.S.C. 604.

survives reentry into the Earth's atmosphere. While these risks are small and are likely to remain so for the near term, continued and unmitigated growth in the orbital debris population may limit the usefulness of space—particularly high-value orbits such as low-Earth orbit (LEO)[4] and geostationary-Earth orbit (GEO)[5]—for communications and other uses in the future, by raising the costs and lowering the reliability of space-based systems.

This Second Report and Order adopts rules to minimize the creation of orbital debris. Minimizing the creation of orbital debris will help to ensure continued affordable access to space by the United States, the continued provision of U.S. space-based communications, and the continued safety of persons and property in space and on the surface of the Earth. In addition, the adoption of orbital debris mitigation rules by the FCC furthers the long-standing policy of the United States to minimize the creation of orbital debris, and is consistent with international policies and initiatives to mitigate orbital debris.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA: Two parties submitted comments that specifically responded to the IRFA. The Radio Amateur Satellite Corporation (AMSAT)[6] contends that it and its constituent members qualify as ''small entities'' that must be considered in the Commission's formulation of any new rules that may be applicable to the amateur-satellite service. In addition, the University of Mississippi National Remote Sensing and Space Law Center (UM Space Law Center)[7] proposes that, although threshold requirements for orbital debris mitigation should be set by the FCC, the orbital debris mitigation plans of small entities should be reviewed on a case-by-case basis and that small entities should be able to seek exemptions from orbital debris mitigation reporting or compliance requirements if specific reasons for the exemption can be shown.

There is no significant economic impact on AMSAT or its constituent members under the RFA. AMSAT is a non-profit scientific and educational organization that represents individuals who hold amateur radio licenses under 47 CFR 97 of the Commission's rules, and who operate or communicate with amateur space stations. Because only individuals may hold amateur licenses and amateur licensees are precluded from operating for commercial purposes, neither AMSAT nor individual amateur licensees fit the definition of small entity, as defined by the SBA.[8] Nonetheless, the Second Report and Order has addressed the proposal of AMSAT and other commenters to exempt categorically amateur space stations from orbital debris mitigation requirements and found such proposals to be inconsistent with the purpose and object of such requirements.[9]

Furthermore, the rules adopted in the Second Report and Order are consistent with the proposals of the UM Space Law Center. Under the new rules, the elements of the orbital debris mitigation plans of all parties—not just small entities—are reviewed on a case-by-case basis in the majority of instances. Where the rules adopt rules in lieu of case-by-case review, such as for the post-mission disposal of GEO satellites, parties are permitted under existing FCC rules to seek waivers of such requirements for specific good cause shown.[10] In addition, the Second Report and Order exempts, or ''grandfathers,'' in-orbit GEO satellites that were launched prior to the release of the Orbital Debris Notice on March 18, 2002 from the minimum post-mission disposal altitude requirements that are adopted by the Commission.[11] Comments indicated that the financial impact of the post-mission disposal rules for GEO spacecraft could be significant for this class of satellites in the absence of grandfathering.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply: The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.[12] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [13] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[14] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[15] A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[16] Nationwide, as of 1992, there were approximately 275,801 small organizations.[17] ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.''[18] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[19] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[20] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees that may be affected by the proposed rules, if adopted.

The rules proposed in this Second Report and Order would affect satellite operators, if adopted. The Commission has not developed a definition of small entities applicable to satellite operators. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to

[4] For purposes of the Second Report and Order, the term LEO is used to refer to the orbits at altitudes below 2,000 kilometers.

[5] GEO is a circular orbit along the plane of the Earth's equator at an altitude of approximately 35,786 kilometers. A spacecraft in geostationary-Earth orbit can be maintained at a constant longitudinal position relative to the Earth, thus allowing the satellite to be ''seen'' continuously from, and at a fixed orientation to, any given point on the Earth's surface.

[6] Comments of the Radio Amateur Satellite Corporation Regarding Initial Regulatory Flexibility Analysis, IB Docket No. 02–54 (filed July 17, 2002).

[7] Response of the University of Mississippi National Remote Sensing and Space Law Center to Initial Regulatory Flexibility Analysis, IB Docket No. 02–54 (filed July 16, 2002).

[8] *See* 5 U.S.C. 601(6) (''small entity'' has same meaning as ''small business'' under RFA).

[9] *See Second Report and Order* at paras. 89–92.

[10] *See* 47 CFR 1.3.

[11] *See Second Report and Order* at Section III.D.4.i.

[12] 5 U.S.C. 603(b)(3).

[13] *Id.* 601(6).

[14] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[15] Small Business Act, 15 U.S.C. 632 (1996).

[16] 5 U.S.C. 601(4).

[17] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[18] 5 U.S.C. 601(5).

[19] U.S. Dept. of Commerce, Bureau of the Census, ''1992 Census of Governments.''

[20] *Id.*

Satellite Telecommunications.[21] The SBA has developed a small business size standard for Satellite Telecommunications, which consists of all such firms having $12.5 million or less in annual receipts.[22] According to Census Bureau data for 1997, in this category there was a total of 324 firms that operated for the entire year.[23] Of this total, 273 firms had annual receipts of under $10 million, and an additional twenty-four firms had receipts of $10 million to $24,999,999.[24] Thus, under this size standard, the majority of firms can be considered small.

In addition, Commission records reveal that there are approximately 240 space station operators licensed by this Commission. We do not request or collect annual revenue information, and thus are unable to estimate the number of licensees that would constitute a small business under the SBA definition. Small businesses may not have the financial ability to become space station licensees because of the high implementation costs associated with satellite systems and services.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements: Under the rules as amended by the Second Report and Order, a satellite system operator requesting FCC space station authorization, or an entity requesting a Commission ruling for access to a non-U.S.-licensed space station under the FCC's satellite market access procedures, must submit an orbital debris mitigation plan to the Commission regarding spacecraft design and operation in connection with its request. The Second Report and Order provides guidance for the preparation of such plans. The Second Report and Order also adopt requirements concerning the post-mission disposal of Commission-licensed space stations operating in or near the two most heavily used orbital regimes, low-Earth orbit and geostationary-Earth orbit.

As discussed below, all parties requesting Commission authorization to operate a space station or a ruling for access to a non-U.S.-licensed space station must already demonstrate under existing FCC rules that they have the technical and legal ability to conduct such operations as a prerequisite to grant of an FCC authorization.[25] Because the preparation and disclosure of orbital debris mitigation plans utilizes engineering and legal resources similar to those currently used in the space station licensing process, it is expected that all parties—including small entities—will have available the resources to prepare and disclose orbital debris mitigation plans.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered: The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[26] Each is discussed in turn below.

(1) Differing compliance or reporting requirements.The Second Report and Order requires all satellite operators to disclose plans to mitigate orbital debris as part of their requests for Commission authorization. The requirement for the disclosure of orbital debris mitigation plans is not a periodic reporting requirement, but is instead triggered by submission of a request for Commission licensing or authorization, the timing of which is subject to the control of the applicant. As a result, the timetable for the disclosure can be adjusted by any applicant—including small entities—without the need for specific exemptions in the Commission's rules. Because the preparation and disclosure of orbital debris mitigation plans utilizes engineering and legal resources similar to those currently used in the licensing process, it is expected that all parties—including small entities—will have available the resources to prepare and disclose orbital debris mitigation plans. Furthermore, authorizing space station operations by small entities, which pose the same public interest concerns as those posed by large entities, without any consideration of whether the proposed space station operations will contribute unreasonably to the creation of orbital debris would undermine the policy object of the Commission and the United States Government in mitigating orbital debris.

(2) Clarification, consolidation, or simplification of compliance or reporting requirements. The Second Report and Order clarifies, consolidates, and/or simplifies several existing compliance or reporting requirements regarding the operation of FCC-licensed space stations that will benefit all authorized space station operators, including small entities.

(3) Use of performance, rather than design, standards. The Second Report and Order establishes its debris mitigation requirements in terms of performance standards and does not adopt design standards for any class of entities, including small entities.

(4) Exemption from coverage of the rule, or any part thereof, for small entities. Authorizing space station operations by small entities, which pose the same public interest concerns as those posed by large entities, without any consideration of whether the proposed space station operations will contribute to the creation of orbital debris would undermine the policy object of the Commission and the United States Government in mitigating orbital debris. A categorical exemption from debris mitigation rules was considered in the context of amateur space station licenses—even though amateur space station licensees are not small entities as defined by the RFA—and was rejected as inconsistent with the underlying purpose of the rules.[27] In addition, any operator—including a small entity—is permitted under existing FCC rules to seek waivers of debris mitigation requirements for specific good cause shown.[28] In addition, the Second Report and Order exempts, or ''grandfathers,'' all in-orbit GEO satellites that were launched prior to the release of the Orbital Debris Notice on March 18, 2002 from the minimum post-mission disposal altitude requirement that are adopted by the Commission.[29] Comments indicated that the financial impact of the post-mission disposal rules for GEO spacecraft could be significant for this

[21] ''This industry comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Small Business Administration, 1997 NAICS Definitions, NAICS 513340.

[22] 13 CFR 121.201, NAIC code 517410 (changed from 513340 in October 2002).

[23] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 513340 (issued October 2000).

[24] *Id.*

[25] 47 CFR 25.140–146 (requiring applicants in various satellite services to demonstrate technical qualifications as a prerequisite to receiving Commission authorization for space station operations).

[26] 5 U.S.C. 603(c)(1)—(c)(4).

[27] *See* Second Report and Order at para. 91.

[28] *See* 47 CFR 1.3.

[29] *See* Second Report and Order at Section III.D.4.i.

class of satellites in the absence of grandfathering.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules: Remote sensing satellite systems are licensed by both the FCC and the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce. The Second Report and Order waives disclosure requirements concerning post-mission disposal of spacecraft for remote sensing satellites when those disposal plans have been reviewed and approved by NOAA as part of its licensing process.

Report to Congress: The Commission will send a copy of the Second Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[30] In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.[31]

Summary of the Second Report and Order

In this Second Report and Order, the Commission amends parts 5, 25, and 97 of its rules by adopting new rules concerning mitigation of orbital debris. The Second Report and Order concludes that the Commission has authority under the Communications Act, 47 U.S.C. 151 *et seq.*, to adopt orbital debris mitigation rules.

Under the Commission's rules, as amended by the Second Report and Order, a satellite system operator requesting FCC space station authorization, or an entity requesting a Commission ruling for access to a non-U.S.-licensed space station under the FCC's satellite market access procedures, must submit an orbital debris mitigation plan to the Commission regarding spacecraft design and operation in connection with its request. Entities that have requests for such Commission authorization currently pending have 30 days after the effective date of the orbital debris disclosure rules in which to amend their requests by filing a disclosure of debris mitigation plans in a manner consistent with this Second Report and Order. The Second Report and Order also amends §§ 25.143(b), 25.145(c)(3), 25.146(i)(4), and 25.217 to eliminate previously adopted, duplicative orbital debris disclosure requirements for specific satellite services. The Commission will announce the effective date of the elimination of these service specific disclosure requirements in a future **Federal Register** notice, which will also announce the effective date of the new orbital debris disclosure rules in §§ 5.63(e), 25.114(d)(14), and 97.207(g).

The Second Report and Order provides guidance for the preparation of debris mitigation plans. The Second Report and Order amends §§ 5.63, 25.114, and 97.207 of the Commission's rules to specify the elements of the orbital debris mitigation plans that must be addressed as part of a request for Commission authorization. As a result, mitigation plans must address elements of spacecraft design and operations so as to minimize the affect of collisions with small debris, the minimization of debris generated by accidental explosions, the selection of safe flight profiles to minimize collisions with large objects, and disposal plans for spacecraft at end of life.

The Second Report and Order amends the Commission's rules governing application filing, pre-operational maneuvers, on-orbit operations, and coordination of maneuvers. The Second Report and Order declines to adopt an orbital tolerance for NGSO spacecraft, but amends § 25.114 of the Commission's rules to require disclosure of the accuracy, if any, with which the orbital parameters of NGSO spacecraft will be maintained. It also adopts a new rule § 25.282 which authorizes GEO spacecraft to transmit in connection with short-term transitory maneuvers directly related to post-launch, orbit-raising maneuvers, provided that certain conditions are met.

The Second Report and Order also adopts a proposal to shorten and simplify the text of § 25.210(j) of the Commission's rules, which requires GEO space stations to be maintained within ±0.05° of their assigned orbital longitude, and to provide an explicit exception for certain end-of-life operations. It defers the issue of whether to extend the longitudinal tolerance of ±0.05°, applicable to space stations in the fixed-satellite service, to all space stations, including mobile-satellite service (MSS) and remote sensing space stations, to a further notice of proposed rulemaking to be initiated at a later date. In addition, the Second Report and Order amends § 25.280 of the Commission's rule to clarify the timing of the notice that must be provided to the Commission once a GEO spacecraft initiates inclined orbit operations.

Furthermore, the Second Report and Order amends § 25.114 to require a more detailed discussion of how certain satellite systems will avoid potential in-orbit collisions. These systems include those launched into a low-Earth orbit that is identical, or very similar, to an orbit used by another system, as well as a GEO system that is proposed to be co-located with other satellites at a single GEO orbital location.

The Second Report and Order adopts rules concerning the post-mission disposal of Commission-licensed spacecraft. The Commission will examine orbital debris mitigation plans of non-geostationary satellite orbit (NGSO) spacecraft, including LEO spacecraft, on a case-by-case basis in light of the U.S. Government Orbital Debris Mitigation Standard Practices (U.S. Government Standard Practices) and the orbital debris mitigation guidelines presented by the Inter-Agency Space Debris Coordination Committee (IADC Guidelines). Use of post-mission disposal methods for LEO spacecraft as set forth by the U.S. Government Standard Practices and IADC Guidelines suggest that the space station will operate consistent with the public interest. Disclosures indicating that a spacecraft will not use one of these disposal methods may necessitate the Commission to seek further information, or ultimately to condition or withhold approval. Furthermore, the Second Report and Order amends §§ 5.63, 25.114, and 97.207 to require entities proposing to dispose of spacecraft by means of atmospheric re-entry to assess the risk of human casualty from such maneuvers.

For GEO spacecraft, the Second Report and Order adopts the proposal of the Orbital Debris Notice to evaluate post-mission disposal plans according to the formula developed by the IADC Guidelines for determining the minimum perigee storage altitude for GEO spacecraft at end of life. For GEO spacecraft launched prior to the release of the Orbital Debris Notice on March 18, 2002, the Commission exempts, or ''grandfathers,'' such spacecraft from the requirement to be relocated at end of life to a disposal orbit calculated by use of IADC formula. The Second Report and Order adopts the proposed rule that an GEO spacecraft that is disposed of at end of life according to the IADC formula may operate outside of its assigned orbital location for the purpose of such post-mission disposal, on the condition that the spacecraft's tracking, telemetry, and control transmissions are planned so as to avoid electrical interference to other satellites and are coordinated with any potentially affected satellite networks. Furthermore, the Second Report and Order requires all Commission-licensed spacecraft to

[30] *See* 5 U.S.C. 801(a)(1)(A).

[31] *See* 5 U.S.C. 604(b).

ensure that all stored energy sources on board the satellite are discharged at the end of life, unless prevented by technical failures beyond their control. It also amends §§ 5.63, 25.114, and 97.207 to require disclosure of the quantity of fuel—if any—that will be reserved for post-mission disposal maneuvers of both GEO and NGSO spacecraft. New post-mission disposal requirements are codified in new § 25.283 of the Commission's rules.

The Second Report and Order clarifies that amateur, experimental, and non-U.S.-licensed spacecraft must submit the same orbital debris mitigation disclosure as U.S.-licensed spacecraft requesting authorization pursuant to part 25 of the Commission's rules. The Second Report and Order adopts the proposal not to address matters involving post-mission disposal of spacecraft that are co-licensed by the National Oceanic and Atmospheric Administration (NOAA) since such plans are already subject to effective regulatory review by NOAA. The Second Report and Order also states that the Commission does not intend to alter the current practice of not requiring information about the launch vehicle used to launch an FCC-licensed spacecraft into orbit, but the Commission retains discretion to consider orbital debris concerns involving a particular launch vehicle in the event they are raised as part of a request for a Commission authorization.

Finally, the Second Report and Order addresses liability and insurance issues related to orbital debris. It declines to adopt a rule requiring space station operator to obtain insurance to protect the United States from exposure to liability claims arising from orbital debris, but states insurance and liability issues will continue to play a role in the determination of whether approval of a particular debris mitigation plan serves the public interest, particularly when the plan involves activities, such as atmospheric re-entry, which may involve more immediate and substantial risks to persons and property on the surface of the Earth.

Ordering Clauses

Accordingly, pursuant to sections 1, 4(i), 301, 303, 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 301, 303, 308, 309, and 310, this Second Report and Order in IB Docket No. 02–54 is hereby adopted.

Parts 5, 25, and 97 of the Commission's rules are amended as set forth below.

The Consumer Information Bureau, Reference Information Center, shall send a copy of this Second Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 5, 25, and 97

Reporting and recordkeeping requirements, Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 5, 25, and 97 as follows:

PART 5—EXPERIMENTAL RADIO SERVICE (OTHER THAN BROADCAST)

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

Authority: Secs. 4, 302, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303. Interpret or apply sec. 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.

■ 2. Add paragraph (e) to § 5.63 to read as follows:

§ 5.63 Supplementary statements required.

* * * * *

(e) Except where the satellite system has already been authorized by the FCC, applicants for an experimental authorization involving a satellite system must submit a description of the design and operational strategies the satellite system will use to mitigate orbital debris, including the following information:

(1) A statement that the space station operator has assessed and limited the amount of debris released in a planned manner during normal operations, and has assessed and limited the probability of the space station becoming a source of debris by collisions with small debris or meteoroids that could cause loss of control and prevent post-mission disposal;

(2) A statement that the space station operator has assessed and limited the probability of accidental explosions during and after completion of mission operations. This statement must include a demonstration that debris generation will not result from the conversion of energy sources on board the spacecraft into energy that fragments the spacecraft. Energy sources include chemical, pressure, and kinetic energy. This demonstration should address whether stored energy will be removed at the spacecraft's end of life, by depleting residual fuel and leaving all fuel line valves open, venting any pressurized system, leaving all batteries in a permanent discharge state, and removing any remaining source of stored energy, or through other equivalent procedures specifically disclosed in the application;

(3) A statement that the space station operator has assessed and limited the probability of the space station becoming a source of debris by collisions with large debris or other operational space stations. Where a space station will be launched into a low-Earth orbit that is identical, or very similar, to an orbit used by other space stations, the statement must include an analysis of the potential risk of collision and a description of what measures the space station operator plans to take to avoid in-orbit collisions. If the space station operator is relying on coordination with another system, the statement must indicate what steps have been taken to contact, and ascertain the likelihood of successful coordination of physical operations with, the other system. The statement must disclose the accuracy—if any—with which orbital parameters of non-geostationary satellite orbit space stations will be maintained, including apogee, perigee, inclination, and the right ascension of the ascending node(s). In the event that a system is not able to maintain orbital tolerances, *i.e.*, it lacks a propulsion system for orbital maintenance, that fact should be included in the debris mitigation disclosure. Such systems must also indicate the anticipated evolution over time of the orbit of the proposed satellite or satellites. Where a space station requests the assignment of a geostationary-Earth orbit location, it must assess whether there are any known satellites located at, or reasonably expected to be located at, the requested orbital location, or assigned in the vicinity of that location, such that the station keeping volumes of the respective satellites might overlap. If so, the statement must include a statement as to the identities of those parties and the measures that will be taken to prevent collisions;

(4) A statement detailing the post-mission disposal plans for the space station at end of life, including the quantity of fuel—if any—that will be reserved for post-mission disposal maneuvers. For geostationary-Earth orbit space stations, the statement must disclose the altitude selected for a post-mission disposal orbit and the calculations that are used in deriving the disposal altitude. The statement must also include a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry

of the space station. In general, an assessment should include an estimate as to whether portions of the spacecraft will survive re-entry and reach the surface of the Earth, as well as an estimate of the resulting probability of human casualty.

PART 25—SATELLITE COMMUNICATIONS

■ 3. 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.

■ 4. Add paragraph (d)(14) to § 25.114 to read as follows:

§ 25.114 Applications for space station authorizations.

* * * * *

(d) * * *

(14) A description of the design and operational strategies that will be used to mitigate orbital debris, including the following information:

(i) A statement that the space station operator has assessed and limited the amount of debris released in a planned manner during normal operations, and has assessed and limited the probability of the space station becoming a source of debris by collisions with small debris or meteoroids that could cause loss of control and prevent post-mission disposal;

(ii) A statement that the space station operator has assessed and limited the probability of accidental explosions during and after completion of mission operations. This statement must include a demonstration that debris generation will not result from the conversion of energy sources on board the spacecraft into energy that fragments the spacecraft. Energy sources include chemical, pressure, and kinetic energy. This demonstration should address whether stored energy will be removed at the spacecraft's end of life, by depleting residual fuel and leaving all fuel line valves open, venting any pressurized system, leaving all batteries in a permanent discharge state, and removing any remaining source of stored energy, or through other equivalent procedures specifically disclosed in the application;

(iii) A statement that the space station operator has assessed and limited the probability of the space station becoming a source of debris by collisions with large debris or other operational space stations. Where a space station will be launched into a low-Earth orbit that is identical, or very similar, to an orbit used by other space stations, the statement must include an analysis of the potential risk of collision and a description of what measures the space station operator plans to take to avoid in-orbit collisions. If the space station operator is relying on coordination with another system, the statement must indicate what steps have been taken to contact, and ascertain the likelihood of successful coordination of physical operations with, the other system. The statement must disclose the accuracy—if any—with which orbital parameters of non-geostationary satellite orbit space stations will be maintained, including apogee, perigee, inclination, and the right ascension of the ascending node(s). In the event that a system is not able to maintain orbital tolerances, *i.e.*, it lacks a propulsion system for orbital maintenance, that fact should be included in the debris mitigation disclosure. Such systems must also indicate the anticipated evolution over time of the orbit of the proposed satellite or satellites. Where a space station requests the assignment of a geostationary-Earth orbit location, it must assess whether there are any known satellites located at, or reasonably expected to be located at, the requested orbital location, or assigned in the vicinity of that location, such that the station keeping volumes of the respective satellites might overlap. If so, the statement must include a statement as to the identities of those parties and the measures that will be taken to prevent collisions;

(iv) A statement detailing the post-mission disposal plans for the space station at end of life, including the quantity of fuel—if any—that will be reserved for post-mission disposal maneuvers. For geostationary-Earth orbit space stations, the statement must disclose the altitude selected for a post-mission disposal orbit and the calculations that are used in deriving the disposal altitude. The statement must also include a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of the space station. In general, an assessment should include an estimate as to whether portions of the spacecraft will survive re-entry and reach the surface of the Earth, as well as an estimate of the resulting probability of human casualty.

* * * * *

■ 5. Revise § 25.210(j) to read as follows:

§ 25.210 Technical requirements for space stations in the Fixed-Satellite Service.

* * * * *

(j) Space stations operated in the geostationary satellite orbit must be maintained within 0.05° of their assigned orbital longitude in the east/west direction, unless specifically authorized by the Commission to operate with a different longitudinal tolerance, and except as provided in Section 25.283(b) (End-of-life Disposal).

* * * * *

■ 6. Revise § 25.280 to read as follows:

§ 25.280 Inclined orbit operations.

(a) Satellite operators may commence operation in inclined orbit mode without obtaining prior Commission authorization provided that the Commission is notified by letter within 30 days after the last north-south station keeping maneuver. The notification shall include:

(1) The operator's name;

(2) The date of commencement of inclined orbit operation;

(3) The initial inclination;

(4) The rate of change in inclination per year; and

(5) The expected end-of-life of the satellite accounting for inclined orbit operation, and the maneuvers specified under § 25.283 of the Commission's rules.

(b) Licensees operating in inclined-orbit are required to:

(1) Periodically correct the satellite attitude to achieve a stationary spacecraft antenna pattern on the surface of the Earth and centered on the satellite's designated service area;

(2) Control all electrical interference to adjacent satellites, as a result of operating in an inclined orbit, to levels not to exceed that which would be caused by the satellite operating without an inclined orbit;

(3) Not claim protection in excess of the protection that would be received by the satellite network operating without an inclined orbit; and

(4) Continue to maintain the space station at the authorized longitude orbital location in the geostationary satellite arc with the appropriate east-west station-keeping tolerance.

■ 7. Add § 25.282 to subpart D to read as follows:

§ 25.282 Orbit raising maneuvers.

A space station authorized to operate in the geostationary satellite orbit under this part is also authorized to transmit in connection with short-term, transitory maneuvers directly related to post-launch, orbit-raising maneuvers, provided that the following conditions are met:

(a) Authority is limited to those tracking, telemetry, and control

frequencies in which the space station is authorized to operate once it reaches its assigned geostationary orbital location;

(b) In the event that any unacceptable interference does occur, the space station licensee shall cease operations until the issue is rectified;

(c) The space station licensee is required to accept interference from any lawfully operating satellite network or radio communication system.

■ 8. Add § 25.283 to subpart D to read as follows:

§ 25.283 End-of-life disposal.

(a) *Geostationary orbit space stations.* Unless otherwise explicitly specified in an authorization, a space station authorized to operate in the geostationary satellite orbit under this part shall be relocated, at the end of its useful life, barring catastrophic failure of satellite components, to an orbit with a perigee with an altitude of no less than:

$36{,}021 \text{ km} + (1000 \cdot C_R \cdot A/m)$

where C_R is the solar pressure radiation coefficient of the spacecraft, and A/m is the Area to mass ratio, in square meters per kilogram, of the spacecraft.

(b) A space station authorized to operate in the geostationary satellite orbit under this part may operate using its authorized tracking, telemetry and control frequencies, and outside of its assigned orbital location, for the purpose of removing the satellite from the geostationary satellite orbit at the end of its useful life, provided that the conditions of paragraph (a) of this section are met, and on the condition that the space station's tracking, telemetry and control transmissions are planned so as to avoid electrical interference to other space stations, and coordinated with any potentially affected satellite networks.

(c) *All space stations.* Upon completion of any relocation authorized by paragraph (b) of this section, or any relocation at end-of-life specified in an authorization, or upon a spacecraft otherwise completing its authorized mission, a space station licensee shall ensure, unless prevented by technical failures beyond its control, that all stored energy sources on board the satellite are discharged, by venting excess propellant, discharging batteries, relieving pressure vessels, and other appropriate measures.

(d) The minimum perigee requirement of paragraph (a) of this section shall not apply to space stations launched prior to March 18, 2002.

PART 97—AMATEUR RADIO SERVICE

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

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

■ 10. Revise § 97.207(g) to read as follows:

§ 97.207 Space station.

* * * * *

(g) The license grantee of each space station must make two written pre-space station notifications to the International Bureau, FCC, Washington DC 20554. Each notification must be in accord with the provisions of Articles S9 and S11 of the ITU Radio Regulations.

(1) The first notification is required no less than 27 months prior to initiating space station transmissions and must specify the information required by Appendix S4 and Resolution No. 642 of the International Telecommunication Union Radio Regulations. The first notification shall also include a description of the design and operational strategies the space station will use to mitigate orbital debris, including the following information:

(i) A statement that the space station operator has assessed and limited the amount of debris released in a planned manner during normal operations, and has assessed and limited the probability of the space station becoming a source of debris by collisions with small debris or meteoroids that could cause loss of control and prevent post-mission disposal;

(ii) A statement that the space station operator has assessed and limited the probability of accidental explosions during and after completion of mission operations. This statement must include a demonstration that debris generation will not result from the conversion of energy sources on board the spacecraft into energy that fragments the spacecraft. Energy sources include chemical, pressure, and kinetic energy. This demonstration should address whether stored energy will be removed at the spacecraft's end of life, by depleting residual fuel and leaving all fuel line valves open, venting any pressurized system, leaving all batteries in a permanent discharge state, and removing any remaining source of stored energy, or through other equivalent procedures specifically disclosed in the application;

(iii) A statement that the space station operator has assessed and limited the probability of the space station becoming a source of debris by collisions with large debris or other operational space stations. Where a space station will be launched into a low-Earth orbit that is identical, or very similar, to an orbit used by other space stations, the statement must include an analysis of the potential risk of collision and a description of what measures the space station operator plans to take to avoid in-orbit collisions. If the space station operator is relying on coordination with another system, the statement must indicate what steps have been taken to contact, and ascertain the likelihood of successful coordination of physical operations with, the other system. The statement must disclose the accuracy—if any—with which orbital parameters of non-geostationary satellite orbit space stations will be maintained, including apogee, perigee, inclination, and the right ascension of the ascending node(s). In the event that a system is not able to maintain orbital tolerances, *i.e.*, it lacks a propulsion system for orbital maintenance, that fact should be included in the debris mitigation disclosure. Such systems must also indicate the anticipated evolution over time of the orbit of the proposed satellite or satellites. Where a space station requests the assignment of a geostationary-Earth orbit location, it must assess whether there are any known satellites located at, or reasonably expected to be located at, the requested orbital location, or assigned in the vicinity of that location, such that the station keeping volumes of the respective satellites might overlap. If so, the statement must include a statement as to the identities of those parties and the measures that will be taken to prevent collisions;

(iv) A statement detailing the post-mission disposal plans for the space station at end of life, including the quantity of fuel—if any—that will be reserved for post-mission disposal maneuvers. For geostationary-Earth orbit space stations, the statement must disclose the altitude selected for a post-mission disposal orbit and the calculations that are used in deriving the disposal altitude. The statement must also include a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of the space station. In general, an assessment should include an estimate as to whether portions of the spacecraft will survive re-entry and reach the surface of the Earth, as well as an estimate of the resulting probability of human casualty.

(2) The second notification is required no less than 5 months prior to initiating space station transmissions and must specify the information required by

Appendix S4 and Resolution No. 642 of the Radio Regulations.

* * * * *

[FR Doc. 04–20362 Filed 9–8–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket Nos. 01–338; CC Docket No. 96–98; CC Docket No. 98–147; FCC 04–191]

Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) modifies certain of the unbundling obligations associated with fiber networks serving multiple dwelling units (MDUs) pursuant to section 251 of the Telecommunications Act of 1996 (1996 Act). Specifically, the Commission concludes that fiber networks serving predominantly residential MDUs will be subject to the same, limited unbundling obligations governing fiber-to-the-home (FTTH) loops serving individual occupancy premises. The Commission further clarifies that the definition of FTTH loops includes fiber loops deployed to the minimum point of entry (MPOE) of MDUs, regardless of the ownership of the MDU's inside wiring.

DATES: Effective October 12, 2004.

FOR FURTHER INFORMATION CONTACT: Pamela Arluk, Attorney-Advisor, Wireline Competition Bureau, at (202) 418–1580, or via the Internet at *pamela.arluk@fcc.gov*. The complete text of this Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in CC Docket No. 01–338, CC Docket No. 96–98, and CC Docket No. 98–147; FCC 04–191, adopted August 4, 2004, and released August 9, 2004. The full text of this document may 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 1–800–378–3160, or at *www.bcpiweb.com*. It is also available on the Commission's Web site at *http://www.fcc.gov*.

Synopsis of the Order on Reconsideration

1. In the *Triennial Review Order* (68 FR 52276, Sept. 2, 2003), the Commission adopted rules implementing section 251 of the 1996 Act, requiring incumbent local exchange carriers (LECs) to make elements of their local network available to competitors on a unbundled basis. The *Triennial Review Order* imposed only limited unbundling obligations with respect to incumbent LECs' broadband loops. In *USTA* v. *FCC,* 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*), the D.C. Circuit recently upheld these rules. In particular, for loops serving mass market customers, the Commission ruled that incumbent LECs need not unbundle either dark or lit fiber loops that extend to the customer's premises (known as fiber-to-the-home or FTTH loops) deployed in new build, or ''greenfield,'' situations. Where a FTTH loop is deployed in overbuild, or ''brownfield,'' situations, incumbent LECs must either provide unbundled access to a 64 kbps transmission path over the fiber loop or unbundled access to a spare copper loop. The FTTH rules expressly applied only to fiber loops serving individual occupancy premises, and not multiunit premises.

2. In this Order, the Commission determines that it is possible to make an administrable distinction between predominantly residential MDUs and other multiunit premises for purposes of its unbundling rules. For example, a multi-level apartment building that houses retail stores such as a drycleaner and/or a mini-mart on the ground floor would be considered predominantly residential, while an office building that contains a floor of residential suites would not.

3. The Commission concludes that it is appropriate to apply the FTTH rules to fiber deployed to predominantly residential MDUs. The Commission has the flexibility under section 251(d)(2) of the 1996 Act to consider the statutory goals of section 706, which require the Commission to encourage the deployment of advanced telecommunications capability to all Americans. In the Order, the Commission finds that the broadband deployment goals of section 706 justify reducing the unbundling obligations on fiber to predominantly residential MDUs, providing greater incentives for the deployment of such facilities. By tailoring the Order's unbundling relief to predominantly residential MDUs, the Commission draws an administrable line between those MDUs for which unbundling relief would significantly increase broadband investment incentives and those for which it would not.

4. The Commission further concluded that a new definition of FTTH loops was necessary for purposes of the rules governing predominantly residential MDUs. The prior definition of FTTH loops required the deployment of fiber from the incumbent LEC central office all the way to the end-user customer's premises. However, many MDUs have copper wiring inside the building which is used to connect to each individual tenant. To ensure that the incentives to deploy broadband facilities extend to these buildings as well, the Commission determined that a FTTH loop in the context of predominantly residential MDUs only requires the deployment of fiber from the incumbent LEC's central office to the MPOE of the MDU, which is usually located in the basement of the building. With such a rule, the fact that the incumbent LEC may have copper inside wiring in the MDU will not result in different regulatory treatment.

Final Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. In the *Triennial Review Order*, the Commission issued a Final Regulatory Flexibility Analysis (FRFA) addressing comments submitted with regard to the IRFA. This present Order addresses an issue raised by two petitions for reconsideration of the *Triennial Review Order*. This present Supplemental FRFA (Supplemental FRFA) conforms to the RFA.

6. *Need for, and Objectives of, the Rules.* This Order concludes that the FTTH rules, which relieve the incumbent LECs from certain unbundling obligations, will apply to MDUs that are predominantly residential. In the *Triennial Review Order* released last year, the Commission concluded that the broadband capabilities of FTTH loops would be relieved from unbundling under section 251 of the Act. Today's action builds on the broadband

principles of the *Triennial Review Order* by further extending the unbundling relief to fiber loops deployed to predominantly residential MDUs. In this Order, the Commission performs the section 706 balancing for customers located in predominantly residential MDUs, and concludes that fiber loops provided to such dwellings should have the same unbundling relief as FTTH loops. The Order concludes that determining what constitutes a predominantly residential MDU will be based on the dwelling's predominant use. For example, a multi-level apartment building that houses retail stores such as a drycleaner or a mini-mart would be predominantly residential, while an office building that contains a floor of residential suites would not. The Order further clarifies that a loop will be considered a FTTH loop if it is deployed to the minimum point of entry of a predominantly residential MDU, regardless of the ownership of the inside wiring.

7. *Summary of Significant Issues Raised by the Public.* The subject petitions for reconsideration were not submitted in response to the previous FRFA, and did not address the FRFA.

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

9. In this section, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the revised rule adopted in this Order. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline small businesses within the commercial census category of Wired Telecommunications Carriers. Under this category, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

10. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

11. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

12. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

13. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

14. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities:* In this Order, we conclude that fiber networks serving predominantly residential MDUs will be subject to the same unbundling obligations as FTTH loops serving individual occupancy premises. This rule modification will relieve the providers of such broadband fiber loops from unbundling obligations under section 251 of the Act. This relieved a compliance requirement currently placed on such providers.

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

16. In this Order, we conclude that fiber loops serving predominantly residential MDUs should be governed by the FTTH rules. The Order applies principles established in the *Triennial Review Order* to more precisely calibrate the Commission's broadband policy for fiber loops for customers that reside in MDUs. In response to petitions for reconsideration requesting that the Commission look more closely at the unbundling requirements for MDUs, the Order considers section 706 in its unbundling analysis for customers located in predominantly residential MDUs, and concludes that the record demonstrates that fiber loops provided to such dwellings should have the same unbundling relief as FTTH loops. Although this rule will deny unbundling to competitive carriers seeking to serve customers in predominantly residential MDUs, the

Commission concluded that such unbundling relief was necessary to remove disincentives for incumbent LECs to deploy fiber to these buildings. We believe that this approach is the least burdensome way to ensure that all Americans, not just those residing in single family homes, will be able to obtain the benefits of broadband services. Alternatives considered, including the use of a single, categorical rule, were not adopted because they do not accomplish the Commission's objectives in this proceeding.

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

Final Paperwork Reduction Act Analysis

18. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Ordering Clauses

19. *It is ordered* that, pursuant to the authority contained in sections 2, 4(i)–4(j), 10(d), 201, 251, 303(r), and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 152, 154(i)–4(j), 160(d), 201, 251, 303(r), 706 this Order on Reconsideration *is adopted.*

20. *It is further ordered* that, pursuant to the authority contained in sections 2, 4(i)–4(j), 10(d), 201, 251, 303(r), and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 152, 154(i)–4(j), 160(d), 201, 251, 303(r), and 706, the petitions for reconsideration filed by BellSouth and SureWest *are granted in part.*

21. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR part 51

Interconnection, Unbundling requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ Part 51 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 51—SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

■ 1. The authority citation for Part 51 continues to read:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 256, 271, 303(r), 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 256, 271, 303(r), 332, 47 U.S.C. 157 *note,* unless otherwise noted.

■ 2. Section 51.319 is amended by revising paragraph (a)(3) introductory text to read as follows:

§ 51.319 Specific unbundling requirements.

(a) * * *

(3) *Fiber-to-the-home loops.* A fiber-to-the-home loop is a local loop consisting entirely of fiber optic cable, whether dark or lit, serving an end user's customer premises or, in the case of predominantly residential multiple dwelling units (MDUs), a fiber optic cable, whether dark or lit, that extends to the multiunit premises' minimum point of entry (MPOE).

* * * * *

[FR Doc. 04–20356 Filed 9–8–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. RSPA–99–6106; Amdt. Nos. 192–94, 195–81]

RIN 2137–AD35

Pipeline Safety: Periodic Updates to Pipeline Safety Regulations (2001); Corrections

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Correcting amendments.

SUMMARY: The Research and Special Programs Administration (RSPA) is correcting a final rule published in the **Federal Register** on June 14, 2004 (69 FR 32886). That final rule amended and updated various sections of the pipeline safety regulations and incorporated the most recent editions of the voluntary consensus standards publications referenced in 49 CFR parts 192 and 195. That document made an inadvertent error in the definition of ''Transmission line'' in § 192.3, failed to properly amend Appendix B to part 192, inadvertently reversed a recent amendment to a welder qualification requirement in § 195.222, and contained several typographical errors. This document corrects the final rule by revising the relevant sections.

DATES: Effective July 14, 2004.

FOR FURTHER INFORMATION CONTACT: Gopala K. Vinjamuri by telephone at (202) 366–4503, by fax at (202) 366–4566, by e-mail at *gopala.vinjamuri@rspa.dot.gov,* or by mail at U.S. Department of Transportation, RSPA/Office of Pipeline Safety, Room 2103, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On June 14, 2004, RSPA published a final rule in the **Federal Register** entitled, ''Pipeline Safety: Periodic Updates to Pipeline Safety Regulations'' (69 FR 32886). That final rule amended and updated various sections of the pipeline safety regulations and incorporated the most recent editions of the voluntary consensus standards publications referenced in 49 CFR parts 192 and 195. After the final rule was published, RSPA received ten written comments from interested parties identifying an apparent inconsistency in the definition of ''Transmission line'' in the final rule. Upon further review, we have determined that the June 14, 2002, final rule made an inadvertent error in the definition of ''Transmission line'' in § 192.3, failed to properly amend Appendix B to part 192 due to an improper amendatory instruction, and inadvertently reversed a recent amendment to § 195.222. It also contained several typographical and punctuation errors.

This document corrects the final regulations by revising the relevant sections.

List of Subjects

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

■ Accordingly, 49 CFR parts 192 and 195 are corrected by making the following correcting amendments:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

■ 2. In § 192.3, revise the definition of ''Transmission line'' to read as follows:

§ 192.3 Definitions.

* * * * *

Transmission line means a pipeline, other than a gathering line, that transports gas from a gathering line or storage facility to a gas distribution center, storage facility, or large volume customer that is not down-stream from a gas distribution center; a pipeline that operates at a hoop stress of 20 percent or more of SMYS; or a pipeline that transports gas within a storage field.

Note: A large volume customer may receive similar volumes of gas as a distribution center, and includes factories, power plants, and institutional users of gas.

* * * * *

■ 3. In § 192.7, amend paragraph (c)(2) by revising one entry in the table (table item D(5)) to read as follows:

§ 192.7 Incorporation by reference.

* * * * *

(c) * * *

(2) * * *

Source and name of referenced material	49 CFR reference
* * * * * * *	
D. * * *	
(5) ASME/ANSI B31.8S ''Supplement to B31.8 on Managing System Integrity of Gas Pipelines'' (ASME/ANSI B31.8S–2002).	§§ 192.903(c); 192.907(b); 192.911, Introductory text; 192.911(i); 192.911(k); 192.911(l); 192.911(m); 192.913(a) Introductory text; 192.913(b)(1); 192.917(a) Introductory text; 192.917(b); 192.917(c); 192.917(e)(1); 192.917(e)(4); 192.921(a)(1); 192.923(b)(2); 192.923(b)(3); 192.925(b) Introductory text; 192.925(b)(1); 192.925(b)(2); 192.925(b)(3); 192.925(b)(4); 192.927(b); 192.927(c)(1)(i); 192.929(b)(1); 192.929(b)(2); 192.933(a); 192.933(d)(1); 192.933(d)(1)(i); 192.935(a); 192.935(b)(1)(iv); 192.937(c)(1); 192.939(a)(1)(i); 192.939(a)(1)(ii); 192.939(a)(3); 192.945(a).

* * * * *

■ 4. In § 192.123, revise the introductory text in paragraph (a) as follows:

§ 192.123 Design limitations for plastic pipe.

(a) Except as provided in paragraph (e) of this section, the design pressure may not exceed a gauge pressure of 100 psig (689 kPa) for plastic pipe used in:

* * * * *

■ 5. In § 192.283, revise paragraphs (a)(1)(ii) and (iii) to read as follows:

§ 192.283 Plastic pipe: Qualifying joining procedures.

(a) * * *

(1) * * *

(ii) In the case of thermosetting plastic pipe, paragraph 8.5 (Minimum Hydrostatic Burst Pressure) or paragraph 8.9 (Sustained Static Pressure Test) of ASTM D2517 (ibr, *see* § 192.7); or (iii) In the case of electrofusion fittings for polyethylene pipe and tubing, paragraph 9.1 (Minimum Hydraulic Burst Pressure Test), paragraph 9.2 (Sustained Pressure Test), paragraph 9.3 (Tensile Strength Test), or paragraph 9.4 (Joint Integrity Tests) of ASTM Designation F1055 (ibr, *see* § 192.7).

* * * * *

■ 6. In § 192.505, revise paragraphs (d)(1), (2), and (3) as follows:

§ 192.505 Strength test requirements for steel pipeline to operate at a hoop stress of 30 percent or more of SMYS.

* * * * *

(d) * * *

(1) The component was tested to at least the pressure required for the pipeline to which it is being added;

(2) The component was manufactured under a quality control system that ensures that each item manufactured is at least equal in strength to a prototype and that the prototype was tested to at least the pressure required for the pipeline to which it is being added; or

(3) The component carries a pressure rating established through applicable ASME/ANSI, MSS specifications, or by unit strength calculations as described in § 192.143.

* * * * *

■ 7. In § 192.723, revise paragraph (b)(2) to read as follows:

§ 192.723 Distribution systems: Leakage surveys.

* * * * *

(b) * * *

(2) A leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at least once every 5 calendar years at intervals not exceeding 63 months. However, for cathodically unprotected distribution lines subject to § 192.465(e) on which electrical surveys for corrosion are impractical, a leakage survey must be conducted at least once every 3 calendar years at intervals not exceeding 39 months.

8. In Appendix B to part 192, revise Sections I, II.A, II.B, II.C, and the first sentence of Section II.D to read as follows:

Appendix B to Part 192—Qualification of Pipe

I. Listed Pipe Specifications

API 5L—Steel pipe, ''API Specification for Line Pipe'' (ibr, *see* § 192.7)

ASTM A 53/A53M–99b—Steel pipe, ''Standard Specification for Pipe, Steel Black and Hot-Dipped, Zinc-Coated, Welded and Seamless'' (ibr, *see* § 192.7).

ASTM A 106—Steel pipe, ''Standard Specification for Seamless Carbon Steel Pipe for High Temperature Service'' (ibr, *see* § 192.7).

ASTM A 333/A 333M—Steel pipe, ''Standard Specification for Seamless and Welded Steel Pipe for Low Temperature Service'' (ibr, *see* § 192.7).

ASTM A 381—Steel pipe, ''Standard Specification for Metal-Arc-Welded Steel Pipe for Use with High-Pressure Transmission Systems'' (ibr, *see* § 192.7).

ASTM A 671—Steel pipe, ''Standard Specification for Electric-Fusion-Welded Pipe for Atmospheric and Lower Temperatures'' (ibr, *see* § 192.7).

ASTM A 672—Steel pipe, ''Standard Specification for Electric-Fusion-

Welded Steel Pipe for High-Pressure Service at Moderate Temperatures'' (ibr, *see* § 192.7).

ASTM A 691—Steel pipe, ''Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High Pressure Service at High Temperatures'' (ibr, *see* § 192.7).

ASTM D 2513—Thermoplastic pipe and tubing, ''Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings'' (ibr, *see* § 192.7).

ASTM D 2517—Thermosetting plastic pipe and tubing, ''Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings'' (ibr, *see* § 192.7).

II. Steel Pipe of Unknown or Unlisted Specification.

A. *Bending Properties.* For pipe 2 inches (51 millimeters) or less in diameter, a length of pipe must be cold bent through at least 90 degrees around a cylindrical mandrel that has a diameter 12 times the diameter of the pipe, without developing cracks at any portion and without opening the longitudinal weld.

For pipe more than 2 inches (51 millimeters) in diameter, the pipe must meet the requirements of the flattening tests set forth in ASTM A53 (ibr, *see* § 192.7), except that the number of tests must be at least equal to the minimum required in paragraph II–D of this appendix to determine yield strength.

B. *Weldability.* A girth weld must be made in the pipe by a welder who is qualified under subpart E of this part. The weld must be made under the most severe conditions under which welding will be allowed in the field and by means of the same procedure that will be used in the field. On pipe more than 4 inches (102 millimeters) in diameter, at least one test weld must be made for each 100 lengths of pipe. On pipe 4 inches (102 millimeters) or less in diameter, at least one test weld must be made for each 400 lengths of pipe. The weld must be tested in accordance with API Standard 1104 (ibr, *see* § 192.7). If the requirements of API Standard 1104 cannot be met, weldability may be established by making chemical tests for carbon and manganese, and proceeding in accordance with section IX of the ASME Boiler and Pressure Vessel Code (ibr, *see* 192.7). The same number of chemical tests must be made as are required for testing a girth weld.

C. *Inspection.* The pipe must be clean enough to permit adequate inspection. It must be visually inspected to ensure that it is reasonably round and straight and there are no defects which might impair the strength or tightness of the pipe.

D. *Tensile Properties.* If the tensile properties of the pipe are not known, the minimum yield strength may be taken as 24,000 p.s.i. (165 MPa) or less, or the tensile properties may be established by performing tensile tests as set forth in API Specification 5L (ibr, *see* § 192.7). * * *

* * * * *

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

■ 2. Revise § 195.222 to read as follows:

§ 195.222 Welders: Qualification of welders.

(a) Each welder must be qualified in accordance with section 6 of API 1104 (ibr, *see* § 195.3) or section IX of the ASME Boiler and Pressure Vessel Code, (ibr, *see* § 195.3) except that a welder qualified under an earlier edition than listed in § 195.3 may weld but may not re-qualify under that earlier edition.

(b) No welder may weld with a welding process unless, within the preceding 6 calendar months, the welder has—

(1) Engaged in welding with that process; and

(2) Had one welded tested and found acceptable under section 9 of API 1104 (ibr, *see* § 195.3).

Issued in Washington, DC on August 27, 2004.

Elaine E. Joost,

Acting Deputy Administrator.

[FR Doc. 04–20263 Filed 9–8–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010–4114–02; I.D. 090204D]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Closure of the Closed Area II (CA II) Yellowtail Flounder Special Access Program (SAP)

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

ACTION: Closure of CA II Yellowtail Flounder SAP for fishing year 2004.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), is closing the CA II Yellowtail Flounder SAP to all NE multispecies days-at-sea (DAS) vessels, effective September 3, 2004. Vessels that have not yet departed on a trip to fish in the SAP as of September 3, 2004, may not begin a trip into the SAP.

DATES: Effective September 3, 2004, through April 30, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, (978) 281–9347, fax (978) 281–9135, e-mail *Thomas.Warren@NOAA.gov*.

SUPPLEMENTARY INFORMATION: Regulations governing the CA II Yellowtail Flounder SAP are found at 50 CFR 648.85(b)(3). The regulations authorize vessels issued a valid limited access NE multispecies DAS permit to participate in the CA II Yellowtail Flounder SAP and to fish in the CA II Yellowtail Flounder Access Area, under specific conditions. Unless otherwise authorized by the Regional Administrator, eligible vessels are restricted to two trips per month into the SAP, and the maximum total number of trips allowed into the SAP by all NE multispecies vessels combined is 320 trips for fishing year 2004. The Regional Administrator is authorized by § 648.85(a)(3)(iv)(D) to modify certain regulations pertaining to the U.S./Canada Management Area in order to prevent over-harvesting or under-harvesting of the yellowtail flounder total allowable catch, including the number of total trips allowed into this SAP. The Regional Administrator, based upon Vessel Monitoring System reports and other available information, has determined that 320 trips into the SAP have been taken and that, according to the regulations, no additional NE multispecies DAS vessels may depart port to begin a trip into the CA II Yellowtail Flounder SAP.

Classification

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

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

Dated:September 2, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–20423 Filed 9–3–04; 2:49 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 090204C]

Fisheries of the Exclusive Economic Zone Off Alaska; Flathead Sole in the Bering Sea and Aleutian Islands

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

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of flathead sole in the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catch of flathead sole in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the 2004 total allowable catch (TAC) of flathead sole in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 4, 2004, until 2400 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 TAC of flathead sole in the BSAI was established as 16,150 metric tons by the final 2004 harvest specifications for groundfish in the BSAI (69 FR 9242, February 27, 2004).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the flathead sole TAC in the BSAI has been reached. Therefore, NMFS is requiring that further catches of flathead sole in the BSAI be treated as a prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibition of retention of flathead sole in the BSAI.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 2, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–20422 Filed 9–3–04; 2:49 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 090204B]

Fisheries of the Exclusive Economic Zone Off Alaska; Non-Community Development Quota Pollock with Trawl Gear in the Chinook Salmon Savings Areas of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for non-Community Development Quota (CDQ) pollock with trawl gear in the Chinook Salmon Savings Areas of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 2004 non-CDQ limit of chinook salmon caught by vessels using trawl gear while directed fishing for pollock in the BSAI has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 5, 2004, through 2400 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 chinook salmon PSC limit for the pollock fishery is set at 29,000 fish (§ 679.21(e)(1)(vii)). Of that limit, 7.5 percent is allocated to the groundfish CDQ program as prohibited species quota reserve (§ 679.21(e)(1)(i)). Consequently, the 2004 non-CDQ limit of chinook salmon caught by vessels using trawl gear while directed fishing for pollock in the BSAI is 26,825 animals.

In accordance with § 679.21(e)(7)(viii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 non-CDQ limit of chinook salmon caught by vessels using trawl gear while directed fishing for pollock in the BSAI has been reached. Consequently, the Regional Administrator is prohibiting directed fishing for non-CDQ pollock with trawl gear in the Chinook Salmon Savings Areas defined at Figure 8 to 50 CFR part 679.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibiting directed fishing for non-CDQ pollock with trawl gear in the Chinook Salmon Savings Areas.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for

waiver of prior notice and opportunity for public comment.

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

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

Dated: September 2, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–20421 Filed 9–3–04; 2:49 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 174
Thursday, September 9, 2004

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

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19050; Directorate Identifier 2004–NM–139–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series 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 all EMBRAER Model EMB–135 and –145 series airplanes. This proposed AD would require a one-time inspection of each passenger service unit (PSU) to determine the serial number of the printed circuit board (PCB) installed in each PSU, replacement of the PCB if necessary, related investigative actions, and other specified actions. This proposed AD is prompted by reports that PSUs on two airplanes emitted smoke. We are proposing this AD to prevent failure of a PSU, which could result in smoke or fire in the airplane's passenger cabin.

DATES: We must receive comments on this proposed AD by October 12, 2004.

ADDRESSES: Use one of the following addresses 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.
- *By fax:* (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.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Technical information: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19050; Directorate Identifier 2004–NM–139–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those 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 AD. Using the search function of our docket Web site, anyone can find and read the comments in 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.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

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

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on all EMBRAER Model EMB–135 and –145 series airplanes. The DAC advises that passenger service units (PSUs) on two airplanes emitted smoke. The affected airplanes had not yet been delivered when the incidents occurred. Investigation revealed that the smoke was due to a failure on the printed circuit boards (PCBs) installed in the affected PSUs. The manufacturer has identified a batch of PCBs that are

subject to this failure. This condition, if not corrected, could result in failure of a PSU, which could result in smoke or fire in the airplane's passenger cabin.

Relevant Service Information

EMBRAER has issued Service Bulletin 145–25–0277, Change 02, dated June 28, 2004. The service bulletin describes procedures for doing a one-time inspection of each PSU in the passenger cabin and lavatory to determine the serial number of the PCB installed in the PSU, replacing the PCB with a new or serviceable PCB if necessary, and doing related investigative actions and other specified actions. The investigative actions comprise, for all PSUs, a one-time general operational test of all PSUs and a one-time individual operational test of each PSU on which you replace the PCB. The other specified actions comprise installing placards on all inspected PSUs. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2004–05–02, dated June 2, 2004, to ensure the continued airworthiness of these airplanes in Brazil.

The EMBRAER service bulletin refers to C&D Aerospace Service Bulletin 7130000–25–79, Revision 2, dated June 17, 2004, as an additional source of service information for doing the proposed actions. The EMBRAER service bulletin includes the C&D Aerospace service bulletin.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. According to this bilateral airworthiness agreement, the DAC has kept us informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require you to do the actions in the service information described previously. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under ''Differences Between the Proposed AD and EMBRAER Service Bulletin.''

Differences Between the Proposed AD and EMBRAER Service Bulletin

Although the EMBRAER service bulletin specifies that PCBs with affected serial numbers must be returned to C&D Aerospace, this proposed AD would not require you to do that.

Costs of Compliance

This proposed AD would affect about 539 airplanes of U.S. registry. The proposed actions would take about 3 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $105,105, or $195 per airplane.

Regulatory Findings

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

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

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

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

3. 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 regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

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 FAA 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):

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2004–19050; Directorate Identifier 2004–NM–139–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by October 12, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model EMB–135 and –145 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports that passenger service units (PSUs) on two airplanes emitted smoke. We are issuing this AD to prevent failure of a PSU, which could result in smoke or fire in the airplane's passenger cabin.

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.

One-Time Inspection

(f) Within 90 days after the effective date of this AD, inspect each PSU in the passenger cabin and lavatory to determine the part number (P/N) and serial number (S/N) of the printed circuit board (PCB) installed in the PSU, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–25–0277, Change 02, dated June 28, 2004.

(1) If the PCB is not P/N 7277220–501 with S/N 2108 through 6008 inclusive: Before further flight, do the applicable related investigative actions and other specified actions in accordance with the Accomplishment Instructions of the service bulletin. No further action is required by this paragraph.

(2) If the PCB is P/N 7277220–501 with S/N 2108 through 6008 inclusive: Before further flight, replace the PCB with a new or serviceable PCB having a S/N that is not within the range of 2108 through 6008 inclusive, and do the applicable related investigative actions and other specified actions, in accordance with the Accomplishment Instructions of the service bulletin.

Note 1: EMBRAER Service Bulletin 145–25–0277, Change 02, refers to C&D Aerospace Service Bulletin 7130000–25–79, Revision 2, dated June 17, 2004, as an additional source of service information for doing the required inspection, replacement, and related investigative actions, as applicable. The EMBRAER service bulletin includes the C&D Aerospace service bulletin.

Actions Done Previously

(g) Inspections, replacements, and related investigative actions done before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–25–0277, dated October 22, 2003; or Change 01, dated November 28, 2003; are acceptable for

compliance with the corresponding action required by this AD.

Parts Installation

(h) As of the effective date of this AD, no person may install a PCB having P/N 7277220–501 with S/N 2108 through 6008 inclusive, on any PSU on any airplane.

Returning Parts Not Required

(i) Where EMBRAER Service Bulletin 145–25–0277, Change 02, dated June 28, 2004, specifies to return any PCB with a subject S/N to C&D Aerospace, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(k) Brazilian airworthiness directive 2004–05–02, dated June 2, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on August 31, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–20402 Filed 9–8–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD07–04–099]

RIN 1625–AA08

Special Local Regulations; World Championship Super Boat Race, Deerfield Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations for the World Championship Super Boat Race held offshore of Deerfield Beach, Florida. These special local regulations limit the movement of non-participating vessels in the regulated race area and provide for a viewing area for spectator craft. This rule is needed to provide for the safety of life on navigable waters during the event.

DATES: Comments and related material must reach the Coast Guard on or before September 24, 2004.

ADDRESSES: You may mail comments and related material to Coast Guard Sector Miami, 100 MacArthur Causeway, Miami Beach, FL 33139. Coast Guard Sector Miami maintains the public docket [CGD07–04–099] for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Sector Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Boatswain's Mate Chief D. Vaughn, Coast Guard Sector Miami, FL at (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–04–099], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Sector Miami at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by later notice in the **Federal Register**.

Background and Purpose

Super Boat International Productions, Inc., is sponsoring a high-speed power boat race proposed for October 10, 2004, from 10 a.m. until 5 p.m., in the Atlantic Ocean off Deerfield Beach, Florida. The race organizers expect 80 participants and 200 spectator craft for this event. The event takes place outside of the marked channel so that it will not interfere with commercial shipping. Recreational vessels and fishing vessels normally operate in the waters proposed for the event. This rule is required to provide for the safety of life on navigable waters because of the inherent dangers associated with power boats racing at high speeds in proximity to other vessels. The rule prohibits non-participating vessels from entering the regulated race area offshore of Deerfield Beach, Florida, during the event. The sponsoring organization proposes to patrol and provide safety services for the regulated area in the form of the following: 3 race equipment check boats, 6 medical boats, 10 safety and manatee–sea turtle watch boats, 3 media coverage boats, and 2 medical rescue helicopters. The race schedule follows:

1. The regulated area will be closed one (1) hour before the racing begins to ensure that manatees, sea turtles and spectators are no longer in the regulated area.

2. At 11 a.m., smaller vessels will race in the following manner:

Super Stock (S)	65 miles (10 Laps).
Manufactures (F) 1 ..	59 miles (9 Laps).
Divisional (P) 1, 2, 3, 4, 5.	40 miles (6 Laps).

3. At 1 p.m., racing begins for the Superboats in the following manner:

Superboat (Cat) & Superboat VEE (V).	104 miles (16 Laps).
Superboat Unlimited & Superboat Vee Unlimited.	104 miles (16 Laps).
Superboat Vee Limited (VL), Superboat Limited (Cat), Super X (X).	84 miles (13 Laps).

A Coast Guard Patrol commander will be present during the event to monitor compliance with this regulation.

Discussion of Proposed Rule

This rule will create two regulated areas, a race area and a viewing area. These regulated areas assist in providing for the safety of life on navigable waters and minimizing the inherent dangers associated with powerboat races. These dangers include race craft traveling at high speed in close proximity to one other and in relatively close proximity to spectator craft. Due to these concerns, public safety requires these regulations to provide for the safety of life on the navigable waters.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This regulation would affect a limited area offshore of Deerfield Beach, Florida, and only for a limited time period. It would be effective October 10, 2004 from 10 a.m. until 5 p.m. for the duration of the scheduled races.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transfer or anchor in a portion of the Atlantic Ocean near Deerfield Beach, Florida from 10 a.m. until 5 p.m. on October 10, 2004. The Coast Guard certifies under U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities, because this rule would regulate a very small area, be in effect for a limited duration, and allow the transit of commercial and recreational vessels between races. Moreover, all vessel traffic can pass safely around the zone. Before the effective period, maritime advisories would be issued over VHF–FM radio to allow the maritime community to plan accordingly.

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

Assistance for Small Entities

Under Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

Collection of Information

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

Federalism

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

Unfunded Mandated Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of material, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or

adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are not factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100, as follows:

PART 100—MARINE EVENTS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1

2. From 10 a.m. until 5 p.m. on October 10, 2004, add temporary § 100.35T–07–099 to read as follows:

§ 100.35T–07–099 World Championship Super Boat Race; Deerfield Beach, Florida.

(a) *Regulated areas.* (1) The *regulated area* encompasses all waters located inside of a line connecting the following positions located offshore of Deerfield Beach, Florida:

Point 1: 26°17′08″ N, 080°04′41″ W,
Point 2: 26°17′06″ N, 080°04′17″ W,
Point 3: 26°19′49″ N, 080°04′16″ W,
Point 4: 26°19′49″ N, 080°03′48″ W,

All coordinates referenced use Datum: NAD 1983.

(2) The *spectator area* encompasses all waters located within a box bounded by the following positions located offshore of Deerfield Beach, Florida:

Point 1: 26°17′07″ N, 080°04′26″ W,
Point 2: 26°17′06″ N, 080°04′17″ W,
Point 3: 26°19′49″ N, 080°03′57″ W,
Point 4: 26°19′49″ N, 080°03′48″ W.

All coordinates referenced use Datum NAD: 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Coast Guard Sector Miami, Florida.

(c) *Special Local Regulations.* From 10 a.m. until 5 p.m. on October 10, 2004, non-participant vessels are prohibited from entering the regulated area unless authorized by the Coast Guard Patrol Commander. Spectator craft may remain in the designated spectator area but must follow the directions of the Coast Guard Patrol Commander. The Coast Guard Patrol Commander can be contacted on VHF marine band radio, channel 16.

(d) *Dates:* This section is effective from 10 a.m. until 5 p.m. on October 10, 2004.

Dated: August 30, 2004.

D.B. Peterman,

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

[FR Doc. 04–20456 Filed 9–8–04; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 294

RIN 0596–AC10

Special Areas; State Petitions for Inventoried Roadless Area Management

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: Notice is hereby given that the public comment period for the proposed rule for Special Areas; State Petitions for Inventoried Roadless Area Management, published in the **Federal Register** on July 16, 2004 (69 FR 42636), is being extended.

DATES: Comments must be received on or before November 15, 2004.

ADDRESSES: Send written comments by mail to: Content Analysis Team, Attn: Roadless State Petitions, USDA Forest Service, P.O. Box 221090, Salt Lake City, UT 84122; by facsimile to (801) 517–1014; or by e-mail at *statepetitionroadless@fs.fed.us.* If you intend to submit comments in batched e-mails from the same server, please be aware that electronic security safeguards on Forest Service and Department of Agriculture computer systems for prevention of commercial spamming may limit batched e-mail access. However, the Forest Service is interested in receiving all comments on this proposed rule. Therefore, please call (801) 517–1020 to facilitate transfer of comments in batched e-mail messages. Comments also may be submitted via the World Wide Web/Internet Web site *http://www.regulations.gov.* Please note that all comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The agency cannot confirm receipt of comments. Individuals wishing to inspect the comments should call Jody Sutton at (801) 517–1023 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Dave Barone, Planning Specialist, Ecosystem Management Coordination Staff, Forest Service, USDA, (202) 205–1019.

Dated: September 2, 2004.

Dale N. Bosworth,

Chief.

[FR Doc. 04–20370 Filed 9–8–04; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA155–5081b; FRL–7809–4]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; NO_X RACT Determinations for Two Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of determining the reasonably available control technology (RACT) for the control of nitrogen oxides (NO_X) from two individual sources located in Fairfax County, Virginia; namely, the Central Intelligence Agency, and the National Reconnaissance Office. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule

will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 12, 2004.

ADDRESSES: Submit your comments, identified by VA155–5081 by one of the following methods:

A. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: morris.makeba@epa.gov*.

C. *Mail:* Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. VA155–5081. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The Federal *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Virginia's Approval of NO_X RACT Determinations for Two Individual Sources, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: August 26, 2004.

Richard J. Kampf,

Acting Regional Administrator, Region III.

[FR Doc. 04–20133 Filed 9–8–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA156–5082b; FRL–7809–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia: NO_X RACT Determinations for Prince William County Landfill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of determining the reasonably available control technology (RACT) for the control of nitrogen oxides (NO_X) from the Prince William County Landfill, located in Prince William County, Virginia. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 12, 2004.

ADDRESSES: Submit your comments, identified by VA156–5082 by one of the following methods:

A. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: morris.makeba@epa.gov*.

C. *Mail:* Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. VA156–5082. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form

of encryption, and be free of any defects or viruses. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Betty Harris, (215) 814–2168, or by e-mail at *harris.betty@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Virginia's Approval of NO_X RACT Determinations for Prince William County Landfill, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: August 26, 2004.

Richard J. Kampf,

Acting Regional Administrator, Region III.

[FR Doc. 04–20131 Filed 9–8–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 25

RIN 1090–AA91

Procedures for Review of Mandatory Conditions and Prescriptions in FERC Hydropower Licenses

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Interior (Department) proposes a public review process for conditions and prescriptions of the Department pursuant to its authority under the Federal Power Act. The Department also proposes to create an administrative appeals process for review of such measures. The Federal Power Act authorizes the Department to include in hydropower licenses issued by the Federal Energy Regulatory Commission conditions and prescriptions necessary to protect Federal and tribal lands and resources and to provide fishways when navigable waterways or Federal reservations are used for hydropower generation. The public review process will enable the public and the license applicant to comment on the Department's preliminary conditions and prescriptions, and to provide information to assist the Department in its formulation of modified conditions and prescriptions. The information obtained through this process will help the Department in refining and developing its conditions and prescriptions, which an applicant may appeal using the proposed appeals process to obtain an expeditious policy level review. These proposed processes are designed to coincide with and complement the Commission's overall licensing process. The Department recently worked with the Commission to develop a new integrated licensing process, see Federal Energy Regulatory Commission Order 2002, July 23, 2003, 104 FERC ¶ 61,109.

DATES: Comments should be received no later than November 8, 2004, late comments will be considered to the extent practicable.

ADDRESSES: You may submit comments, identified by RIN 1090–AA91, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *Larry_Finfer@ios.doi.gov.* Include RIN 1090–AA91 in the subject line of the message.
- Fax: 202–208–4867.
- Mail: Office of the Secretary, Office of Policy Analysis, MS 4426-MIB, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

Your comments on the information collection provisions of this rulemaking should be sent to the attention of the desk officer for the Department of the Interior at the Office of Management and Budget via facsimile (202–395–6566) or by e-mail (*OIRA_Docket@omb.eop.gov*). Please also send a copy of these comments to the Office of Policy Analysis, U.S. Department of the Interior, at the address provided above.

FOR FURTHER INFORMATION CONTACT: William Bettenberg, Office of Policy Analysis, MS4426–MIB, U.S. Department of the Interior, 1849 C St., NW., Washington, DC 20240; phone: 202–208–5978; fax: 202–208–4867; electronic mail address: *William_Bettenberg@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of the Proposed Rule
IV. Commission Coordination
V. Procedural Requirements

I. Public Comment Procedures

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 address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. Background

Federal Power Act

Subchapter I of the Federal Power Act (FPA), 16 U.S.C. 791–823c, vests in the Department of the Interior (Department), and other Federal resource agencies, the authority to include conditions and prescriptions in licenses for hydroelectric generating facilities issued by the Federal Energy Regulatory Commission (FERC or Commission) (see 18 CFR parts 4, 5, and 16). Under section 18 of the FPA, 16 U.S.C. 811, the U.S. Fish and Wildlife Service may prescribe fishways, and under section 4(e) of the FPA, 16 U.S.C. 797(e), the Secretary of the Interior may establish conditions necessary for the adequate protection and utilization of reservations. ''Reservations,'' as used in the FPA, include lands and certain facilities under the jurisdiction of the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Reclamation, or Bureau of Indian Affairs. Through these sections, the FPA authorizes the Department to set conditions for the protection of public and tribal resources that may be affected when navigable waterways or Federal reservations are used for hydropower generation licensed by FERC.

The Department's final conditions and prescriptions pursuant to sections 4(e) and 18 of the FPA are mandatory. Thus, once the Department has issued its conditions and prescriptions, the Commission must incorporate these measures into any hydropower license it issues under the FPA. This authority has been recognized and upheld by the Federal courts, including the Supreme Court. *See Escondido Mut. Water Co.* v. *La Jolla Band of Mission Indians,* 466 U.S. 765 (1984); *American Rivers* v. *FERC,* 201 F.3d 1186 (9th Cir. 1999); *American Rivers* v. *FERC,* 129 F.3d 99 (2d Cir. 1997); *Bangor Hydro-Electric Co.* v. *FERC,* 78 F.3d 659 (D.C. Cir. 1996). After a license has been issued, the license, including the Department's

conditions and prescriptions, is subject to rehearing before FERC and subsequent judicial review under the FPA's appeal procedures. The FPA gives the Federal appeals courts exclusive jurisdiction over such appeals. 16 U.S.C. 825*l*(b).

Mandatory Conditions Review Process (MCRP)

On January 19, 2001, in response to requests for a review and comment opportunity prior to the issuance of conditions and prescriptions, the Department of the Interior established, through an interagency policy with the Department of Commerce (collectively ''Departments''), the Mandatory Conditions Review Process (MCRP).[1] The MCRP provides license applicants and interested parties an opportunity to review and comment on the Departments' preliminary conditions and prescriptions for specific hydropower licenses. In addition, commenters are encouraged to provide any additional information regarding the Departments' conditions and prescriptions. The MCRP was carefully crafted to work within FERC's deadlines and its process under the National Environmental Policy Act (NEPA), while affording interested parties an opportunity to comment on the record on the Departments' conditions and prescriptions.

Prior to finalizing the MCRP, the Departments provided a public comment period on a draft MCRP. 65 FR 77889 (Dec. 13, 2000). The Departments received 18 sets of comments representing a broad range of interests. Many commenters proposed that the Departments provide, in addition to review and comment, an administrative appeals process. The Departments elected to forego the adoption of an appeals process at that time.

The MCRP has now been in effect for three years. Upon review, the Department of the Interior has concluded that the policy has provided valuable information to inform the Department's conditions and prescriptions and has created important opportunities for the Department to work with license applicants and other interested persons. These positive results support the Department's current proposal to codify, and in some instances clarify, the MCRP in a regulatory framework.

The proposed rule codifies the review process of the MCRP, but only as it relates to Interior authorities and actions, since it establishes the schedule, and underpins the proposed appeals process. At the same time, in a parallel proposed rule, the Department of Commerce is proposing to codify the existing MCRP policy, retaining the rehearing stage of the existing MCRP, while soliciting comments on the possible addition of an administrative review mechanism. In all other respects, the MCRP portions of the two proposed rules are essentially the same.

After reviewing the public comments, the Department will determine if further revision is warranted and publish a final rule. The existing MCRP policy remains in effect until revised or superseded by the final rule.

Administrative Appeals Process

In addition, the Department has determined that an administrative appeals process, that follows review and comment under the MCRP, would further benefit the Department's development of conditions and prescriptions in the licensing process. During the original comment period on the MCRP in 2000, some commenters requested that the Departments implement a more elaborate appeals process than is being proposed in this notice, including employing the use of administrative law judges and evidentiary hearings. That concept was again considered in development of the appeals process in this proposed rule, but rejected because of issues of timeliness. Both the current FERC licensing schedule and FERC's new hydropower licensing process barely provide time for the expedited appeals process being proposed by the Department in this proposed rulemaking. Additionally, the President's National Energy Policy criticized the current licensing process as too prolonged and costly, and called for making the process more clear and efficient. The Department uses a variety of processes for considering appeals under other programs and authorities. Those which include the use of administrative law judges and evidentiary hearings are managed by the Department's Office of Hearings and Appeals (OHA), which employs administrative law judges and is staffed to manage evidentiary hearings. That office, however, has substantial backlogs in appeal cases, and the average case currently takes approximately one and a half years from the date of receipt to resolution. While OHA is making progress in reducing its backlog, there appear to be no prospects that hydropower appeals cases could be processed by that office in the three-month period that appears to fit with FERC's decision schedule and is contemplated by this proposed rule. Prolonging the current licensing process by up to two years is considered untenable.

The proposed appeals process would allow a license applicant to appeal mandatory conditions and prescriptions directly to the Department. The mechanics of the proposed appeals process are designed to accommodate the specific structure of the Department of the Interior, with five bureaus and five assistant secretaries involved in relicensing. The Department believes it is natural and appropriate for the Departments of Agriculture and Commerce to develop hydropower licensing conditions and prescriptions through different institutional processes given that each of those Departments have a single bureau with licensing responsibilities, as long as conditions and prescriptions are timely and consistent. The Department is mindful that if multiple agencies exercise conditions in the same proceeding, the applicant may need to participate in two or more different institutional processes. The Department notes, however, that it is rare for multiple agencies to exercise conditions in the same proceeding. In the 108 license orders issued between 2001 and 2003, 78 did not contain mandatory conditions, 24 contained conditions from one agency, and 6 contained conditions from 2 or more agencies.

National Energy Policy

Interior's proposed rule is consistent with the National Energy Policy Development Group's Recommendation in the National Energy Policy. This proposed rule will codify Interior's Federal Power Act processes as regulations. These regulations, which will be established subject to notice and comment, will be more clear to applicants and the public than Interior's existing guidance and policies. In addition, the proposed rule will help to make the FERC licensing process as a whole more efficient, by integrating the MCRP and appeals process into FERC's process. The Department is of the view that an administrative appeals process will advance efforts to streamline the overall licensing process while also expediting the implementation of effective license conditions. Therefore, in addition to the proposed MCRP regulations, the Department has developed an administrative appeals process that works in concert with the MCRP. These proposals are discussed below.

[1] *See http://www.doi.gov/hydro/final_mcrp_policy.htm.*

III. Discussion of the Proposed Rule

The decision on whether to issue a license for a hydropower facility is solely under the jurisdiction of FERC. The general purpose of the Department's proposed rulemaking is to assure open and careful consideration of mandatory conditions and prescriptions developed by the Department in the licensing of hydropower generating facilities. To that end, the Department is proposing to codify, and in some instances clarify, the existing MCRP (section A, below), and to provide an opportunity for appeal by license applicants of mandatory conditions and prescriptions (section B, below). As discussed below, this proposed framework advances the hydropower licensing goals expressed in the President's National Energy Policy and further harmonizes the Department's processes with existing Commission regulations.

A. The Mandatory Conditions Review Process

Proposed section 25.3 describes the MCRP as a process that allows the public to review and comment on preliminary conditions and prescriptions submitted by the Department for inclusion in hydropower licenses issued by FERC pursuant to the FPA. The process as proposed is open to all, but is limited to conditions and prescriptions issued by the Department under the authority of sections 4(e) and 18 of the FPA. Recommendations filed under sections 10(a) and 10(j) of the FPA, 16 U.S.C. 803(a) and (j), are outside the scope of the MCRP.

The MCRP is triggered when FERC issues a notice that a license application is ready for environmental analysis (REA). Proposed section 25.5 makes clear that the Department will file its preliminary conditions and prescriptions within 60 days after FERC issues its REA notice. It is possible that this 60-day deadline may not be met if the Department lacks sufficient information, such as completed reports on required studies or information on technical feasibility, to support the need for conditions and prescriptions. In such event, the Department may exercise its authority under sections 4(e) and 18 of the FPA by reserving the authority to submit conditions and prescriptions at a later date.

The MCRP ensures that preliminary conditions and prescriptions are publicly reviewed and can be modified if necessary by providing, at proposed sections 25.6(a) and (b), an initial 45-day review and comment period on preliminary conditions and prescriptions and an additional review and comment period in conjunction with review of FERC's draft NEPA document.

As proposed at section 25.6(a), the first review and comment opportunity follows the Department's filing of preliminary conditions and prescriptions with FERC. In addition to filing with FERC, the Department sends its preliminary conditions and reference to supporting information to parties on FERC's service list. By letter to both the parties and FERC, the Department provides 45 days for comments and solicits new supporting evidence regarding the preliminary conditions or prescriptions. At this point in the licensing process, the Department has often worked with the applicant and other interested parties for well over two years through prefiling consultation. The Department notes that the existing MCRP provides 60 days for comments at this stage. In this rulemaking, 45 days has been selected to conform to the reply comments time period in FERC's integrated licensing process.[2]

As proposed at section 25.6(b), a second review and comment opportunity coincides with the development of FERC's NEPA analysis. As part of the licensing process, FERC includes the Department's preliminary conditions and prescriptions in its draft NEPA document. Through the NEPA process, all interested parties—not only those on FERC's service list—have an opportunity to comment on the preliminary conditions and prescriptions.[3] Following the close of the comment period on the NEPA document, the Department will respond to all comments received. By waiting until the close of the draft NEPA comment period, the Department is provided the opportunity to consider additional information developed in the NEPA process.

Any modification of the Department's preliminary conditions and prescriptions occurs after the close of FERC's NEPA comment period. When considering whether to modify a preliminary condition or prescription, the Department coordinates with all of its bureaus, State and Federal resource agencies, and Indian tribes. Proposed section 25.7(b) states that if commenters provide evidence indicating that the Department's preliminary conditions and prescriptions warrant modification, the Department will modify the conditions and prescriptions as necessary and file them with FERC within 60 days of the close of the NEPA comment period. Significantly, the MCRP provides for a higher level of internal review at the modification stage; modified conditions and prescriptions are reviewed and signed at a level at least as high as the State Director or Regional Director, depending on the bureau involved.

The Department notes that the existing MCRP offers one additional opportunity after license issuance for parties to the FERC proceeding to obtain review of the Department's modified conditions and prescriptions. That additional review opportunity would be supplanted by the proposed administrative appeal process and is therefore not included in the proposed rule.

The existing MCRP provides that if, after license issuance, a request to FERC for rehearing identifies substantial issues with the Department's conditions or prescriptions and provides supporting information, the Department would review the conditions or prescriptions and provide a written response within 30 days or within an established schedule. As discussed in more detail below, the proposed rule provides an administrative appeal directly to the Assistant Secretary with authority over the bureau imposing the conditions or prescriptions at issue. Such appeals are intended to be resolved in advance of license issuance. The proposed rule therefore eliminates the need for additional Departmental review at the FERC rehearing stage. Parties remain free to raise issues relating to the Department's conditions and prescriptions in their requests for rehearing.

Proposed section 25.8 addresses how the Department will apply the MCRP in situations in which it is involved in settlement negotiations. Because settlements can occur at any stage during a license proceeding, the MCRP's application depends largely on the stage of the proceeding in which an offer of settlement is made, and on whether the Department files conditions and prescriptions that are part of an offer of settlement. Generally, the provisions of sections 25.6 and 25.7 apply if the Department files preliminary conditions or prescriptions that are not part of an offer of settlement. If, on the other hand, the Department files conditions that are part of an offer of settlement, the Department will follow the special provisions of section 25.8(b). If the Department is involved in ongoing settlement negotiations at the time FERC issues its REA Notice the Department may suspend the negotiations to prepare and file its preliminary conditions and prescriptions within 60 days of the REA

[2] *See* 18 CFR 5.23.

[3] *See* 18 CFR 4.34, and 18 CFR 5.24 and 5.25.

Notice. Similarly, the Department may enter into settlement negotiations after it has already filed preliminary or even modified conditions and prescriptions. If, in either of these situations, negotiations do not result in an offer of settlement, section 25.8(a) will apply. If, on the other hand, either of the above situations results in settlement, the Department will determine, depending on the stage of the proceeding and on a case-by-case basis, the best way to ensure adequate review and comment.

B. The Administrative Appeal

Consistent with the National Energy Policy's goals of streamlining and improving the hydropower licensing process, the Department is proposing to create an expeditious appeals process for review of mandatory conditions and prescriptions. This process will ensure that high standards for resource conservation and economic efficiency are maintained. In the appeals process, the applicant is afforded the opportunity to appeal the conditions or prescriptions and propose alternative conditions or prescriptions. The information provided by the applicant, as well as any additional information that a State, Indian tribe, Federal agency, or the public may provide, will help to ensure that both the impacts and benefits of a hydropower generating facility are appropriately addressed in the licensing process.

The appeals process is proposed to be available to applicants for a hydropower license in proceedings in which the Department establishes one or more mandatory conditions or prescriptions. The Department invites comments on whether the appeals process should be open to others as well.

The appeal is limited by proposed section 25.53 to those issues raised by the applicant during the MCRP and in the FERC record, or issues resulting from the Department's modification of conditions and prescriptions based on new information that was not available for review by the applicant during the MCRP. The Department anticipates that these procedural limits will encourage interested parties to provide early and full information regarding the environmental, economic, and social issues and opportunities that accompany hydropower licensing. The proposed process will ensure that issues are fully briefed and considered, prior to the release of modified conditions, and could possibly reduce the number of appeals. Moreover, if an appeal is filed, the proposed process ensures that issues are well-developed for an Assistant Secretary's timely consideration.

An efficient process is necessary given the multiple agencies with authorities and responsibilities under the Federal Power Act. The Department considers it important to adhere strictly to applicable FERC filing deadlines and schedules. Proposed section 25.54 therefore provides that an appeal must be received within 30 calendar days of the date the Department files its modified conditions and prescriptions with FERC. No extensions of this deadline will be granted, and untimely appeals will be dismissed.

A 21-day period is provided to Indian tribes, States, Federal agencies, and the public to comment on an appeal. These requirements will help to ensure that the appeals process will be completed within 60 days of receipt of the appeal.

The Assistant Secretary (or Assistant Secretaries) with supervisory authority over the bureau establishing the conditions or prescriptions will review the appeal. Proposed section 25.59 states that the Assistant Secretary's review is to be *de novo, i.e.*, nondeferential. In deciding the appeal, the Assistant Secretary will consider, among other things, comments submitted by States, Indian tribes, Federal agencies, and the public, materials submitted by the applicant in support of the appeal, and pertinent portions of the administrative record supporting the conditions or prescriptions, including, as appropriate, comments and information received during the MCRP. Proposed section 25.59 makes this clear.

Materials submitted by the applicant in support of the appeal must include sufficient information consistent with a substantial evidence standard. The Supreme Court has held that mandatory conditions and prescriptions must be supported by substantial evidence in order to withstand judicial review. *Escondido Mut. Water Co.* v. *La Jolla Band of Mission Indians*, 466 U.S. 765, 778 (1984); *see also* 16 U.S.C. 825*l*(b). Proposed section 25.56 therefore provides that the applicant must include, for each condition or prescription appealed, the following:

(a) A concise statement of the reasons for appeal;

(b) A demonstration that the specific issues on appeal were raised with the Department during the Mandatory Conditions Review Process and in the FERC record;

(c) A summary of consultation with the Department, including a statement of disagreements regarding studies, resource impacts, or proposed protection, mitigation, or enhancement measures, as appropriate to the matter or matters being appealed;

(d) A proposed alternative for the appealed condition or prescription which is supported by substantial evidence in the record, is set forth in the same level of detail as the appealed condition or prescription, and is reasonably related to alternatives raised during the MCRP and in the FERC record;

(e) An assessment of how the proposed alternative would affect fish, wildlife, and Indian trust resources; and

(f) Supplementary information, as applicable, such as Form 1 or Form 412 filings, or system load data.

The Assistant Secretary will use this information along with other available information, to assess whether the applicant has demonstrated that the appeal meets one or more of the three criteria set forth in proposed section 25.59(c):

(a) The modified conditions or prescriptions conflict with conditions or prescriptions of another Department, or conflict with those of another bureau (or bureaus); or

(b) An alternative mitigation measure, preferred by the applicant, is as effective as that of the Department, (*i.e.*, the applicant's proposed alternative meets or exceeds the result that would be obtained by the modified condition or prescription filed by the Department);

(c) The modified conditions or prescriptions are not reasonably related to the impacts of the project because they mandate a level of mitigation that is inappropriate given the level of impacts attributable to the project.

In addition, before the Assistant Secretary adopts an alternative condition or prescription, he or she must also find that the alternative meets standards set forth in proposed section 25.59. Any proposed alternative must be:

(a) Supported by the technical and scientific record submitted with the appeal or compiled in the FERC proceeding;

(b) Consistent with the Department's trustee responsibilities for Indian trust resources;

(c) Consistent with the Department's responsibilities for fish, wildlife, and cultural resources; and

(d) Not in conflict with conditions of another Department or with those of another bureau (or bureaus).

Upon receipt of the appeal, proposed section 25.55 states that a review team will be designated to prepare, as appropriate, a substantive assessment of the appeal for the reviewing Assistant Secretary (or Assistant Secretaries). As proposed, the professional review team will not include individuals who developed or approved the mandatory

conditions or prescriptions that are under appeal, although the review team may consult with those individuals or any others. The review team is directed to conduct a threshold evaluation to determine whether the appeal is appropriate for review. As proposed in section 25.55(c), the review team will determine whether the appeal is properly filed and contains the required documentation as set forth in section 25.56, and whether the Secretary has authority to issue the remedy requested by the appeal. For example, the review team will dismiss those appeals that are not timely filed.

With respect to appeals that are reviewed, the Assistant Secretary (or Assistant Secretaries) will have several options pursuant to proposed section 25.59, including: substituting the applicant's proposed remedy for the condition or prescription previously submitted to FERC by the Department; not changing the modified condition or prescription; revision of a modified condition or prescription; or, in the case of appeals asserting a conflict between or among proposed conditions or prescriptions, initiating action to reconcile the conflict. In the unlikely event that a modified condition or prescription has the potential to conflict with the conditions or prescriptions of another Department or Interior bureau, the Assistant Secretary (or Assistant Secretaries) will take action to assure that such a conflict does not occur. This can take many forms but section 25.59(d)(4) would ultimately require eliminating the conflict, either through conforming the modified conditions or prescriptions to the conditions or prescriptions of the other agencies, or the other agency choosing to modify its conditions or prescriptions so that no conflict would occur.

The results of the review will be made public through the FERC docket system. Section 25.59(e) requires the Assistant Secretary to file the new conditions, or a notice that the conditions are unchanged, with FERC within 60 days of receipt of the appeal. Section 25.60(b) requires the Assistant Secretary to file additional findings and supporting information with FERC in another 15 days. By requiring these items to be filed with FERC the rule is providing public notification—the parties to the FERC proceeding will get copies of the filing, and other members of the public will be able to access the filing through FERC electronic eLibrary (*http://www.ferc.gov/docs-filing/elibrary.asp*). This is the same means of publication as all other filings with FERC, including publication of the preliminary and modified conditions. FERC filing requirements are outlined in 18 CFR 385.2001.

In sum, the Department is of the view that this framework will ensure an expeditious, cost-effective, and informed process that advances the National Energy Policy's streamlining goals. The MCRP and the appeals components of the review process build from the same record. This ensures consistency and reduces the need for rehearing or judicial review of FERC licensing decisions. Also, by utilizing the record developed through the MCRP, the proposed appeals process imposes only specific, minimal burdens on applicants and other parties. Such efficiency helps to ensure that the process will be completed within 60 days from the Department's receipt of an appeal. To ensure that the process is cost-effective and well-informed, the Department has developed appeal criteria that encourage innovation by license applicants, and ensure careful development of mandatory conditions and prescriptions. Also, the process provides for policy level review of mandatory conditions and prescriptions in a forum that is consistent with FERC's substantial evidence requirements and comports with the Department's statutory and Indian trust responsibilities. All of these mechanisms will benefit the Department's exercise of its Federal Power Act authorities as well as improve coordination with FERC's licensing process.

C. Pending Legislation

The Department is aware of a proposal for amending the Federal Power Act that is currently being considered by Congress.[4] The Department invites comment about whether elements of the legislative proposal should be incorporated into this rulemaking, specifically:

(1) Should the Department include a provision for an on-the-record, trial-type hearing on disputed issues of material fact? If not, why, and if so, why? If a respondent indicates support for a trial-type hearing on disputed issues of material fact, the Department requests that it provide specific examples of disputed material facts from past or present proceedings, and describe in detail how such a process would work in light of FERC schedules for the three hydropower licensing processes it has established;

(2) The provisions of sections 25.56 *et seq*. cover the substantive requirements for appeals and standards by which appeals will be resolved. The record will document the basis for resolving the appeal. Are there other criteria that should be weighed, and are there tests that respondents suggest be considered in how to weigh such criteria? In the consideration of conditions and prescriptions should the Department give equal consideration to energy supply, distribution, cost and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality)? Should the Department consider other factors? How would the Department demonstrate that equal consideration was given to these factors? What would be the implications of providing equal consideration to such factors for the Department's duties to protect tribal resources, fish, wildlife, and cultural resources if this standard were applied?

(3) Should the Department be required to accept an alternative condition proposed by a license applicant if it provides adequate protection and utilization of the reservation, costs less to implement, and results in improved operation of the project works for electricity production? Please provide the reasons for your response.

(4) Should the Department be required to accept an alternative prescription proposed by a license applicant if it is no less protective than the fishway prescribed by the Department, costs less to implement, and results in improved operation of the project works for electricity production? Please provide the reasons for your response.

(5) In questions (3) and (4) above, an element of the criteria required is that the alternative proposed by the applicant ''costs less to implement.'' If the applicant, for whatever reason, such as improved operations, favors an alternative that is more expensive than that in the Department's modified condition or prescription, is there any reason it should be rejected so long as it is ''equally effective?''

IV. Commission Coordination

The Commission is on record supporting the MCRP and an appeals process. In comments on the MCRP dated June 26, 2000, Commission staff stated: ''Because decisions regarding mandatory conditions are essentially reserved to the Departments, public process before the Commission on these

[4] The above discussion centers on the hydropower title passed by the House in H.R. 6 and by the Senate in S. 14 in the 108th Congress. The same language also appears in S. 2095 which was introduced in the Senate on February 12, 2004. Language regarding alternative hydropower conditions was also included in bills that reached conference in the 107th Congress.

issues is of very limited value. Creating a public process conducted by the Departments on draft mandatory conditions will ensure that public input is available to the Departments, and will help build an administrative record to support reasoned decision-making. Commission staff encourages the Departments to establish formal procedures, preferably in the form of a procedural rule that is codified in the Departments' regulations, for making draft mandatory conditions available to the public, and considering public comment received on those draft conditions.''

The Commission has also encouraged the Department's establishment of an appeals process. In a February 20, 2003, Notice of Proposed Rulemaking, 102 FERC ¶ 61,185, FERC stated the following: ''We appreciate the collegial spirit in which the Departments of Agriculture, Commerce, and the Interior, in particular, have worked with us during the development of this proposed rule. We applaud the announcement of Interior's Assistant Secretary—Policy, Management, and Budget, at our joint hearing on November 7, 2002, in this proceeding, that Interior is developing an administrative appeals process for its mandatory conditions.''

FERC's current schedule calls for initiating work on the final NEPA document upon the filing of modified conditions and prescriptions by resource agencies, and completing that document within 90 days. The Department is of the view that appeals of mandatory conditions and prescriptions should follow filing of modified conditions. This will provide regional officials with a full opportunity to consider comments filed during the MCRP comment period and on FERC's draft NEPA document. The regional officials can thus address various issues and concerns at the modified stage, thereby reducing disputes over conditions and prescriptions. This should cut down significantly on the number of licenses being appealed to assistant secretaries, and the number of requests for rehearing before FERC and subsequent litigation.

The Department recognizes that the timing of the appeals process as proposed potentially could stretch FERC's schedule for completing final NEPA documents by up to 90 days in some cases. The Department's proposed process for filing of appeals and comments on them, and their consideration and resolution by assistant secretaries or other officials is a 90-day process which the Department considers to be the minimum amount of time in which appeals can be realistically managed given the flood of other business before assistant secretaries. The Department also notes that the new FERC integrated licensing process is scheduled to be conducted within a 17-month period of the two years allowed for timely consideration of license applications without requiring resort to license extensions, and that there are at least four options for dealing with the apparent timing conflict between the proposed appeals process and FERC's NEPA schedule. Those four final NEPA timing options are: (1) Continue with the current FERC schedule since, historically, only about 25 percent of licenses have included mandatory conditions or prescriptions and an even smaller proportion of proceedings would likely include an appeal, much less one in which the resolution rendered the final NEPA document inadequate, resulting in the final NEPA document being within proper scope; (2) delay the NEPA preparation schedule until the Interior appeal deadline (30 days), or if an appeal is filed, consider adding an additional NEPA alternative to better assure that the final NEPA document will be properly scoped; (3) delay the NEPA preparation schedule for 90 days to assure that the results of the appeals process are fully considered in the final NEPA document; or (4) prepare a supplement to the final NEPA document if it turns out that resolution of the appeal would render the final NEPA document inadequate for the decision before the FERC commissioners. Using any of these four options, the licensing process could still be completed within the two year limit without resort to license extensions. The Department, however, is sensitive to the issue of potentially extending the duration of the licensing process, and invites comment on how best to fit the appeals process into existing FERC hydroelectric licensing processes and the seriousness of a potential 90-day delay in those processes compared to an opportunity for consideration of appeals and further public comment at the policy level within the Department.

V. Procedural Requirements

1. Regulatory Planning and Review (E.O. 12866)

This document is a significant rule. Though this rule will not have an adverse effect or an annual effect of $100 million or more on the economy, the preliminary assessment of the Office of Management and Budget (OMB) is that the provision for public participation through the MCRP process and the addition of an opportunity for an appeal under the rule may represent novel approaches to public input and review, may serve as a model for future rulemakings, and may have interagency implications. Therefore, the rule will be reviewed by the OMB under Executive Order 12866.

(1) This rule will not have an annual effect of $100 million or more on the economy. The review and comment procedures of the MCRP are already in place, and codifying these procedures as a rule will not impose new costs. The Department expects about two appeals per year under the proposed rule, requiring about 200 hours of additional work by the applicant. Staff costs for two applicants per year clearly fall well short of $100 million. This conclusion also holds in a worst-case analysis; if every applicant appealed modified conditions and prescriptions, that would represent about eight appeals per year. Furthermore, since the decision to appeal is entirely at the discretion of the applicant, that cost will only be incurred when an applicant decides the cost will be justified by the benefits of the process.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed rule is designed to fit within the Commission's current and proposed rules for hydropower licensing. The Commission is on record supporting the MCRP and an appeals process (See part IV above).

(3) This rule will not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This proposed rule concerns only public review and administrative appeal procedures for the Department's hydropower licensing conditions and prescriptions. The rule merely streamlines and improves the Department's participation in the licensing of hydropower generating facilities.

(4) This rule does not raise novel legal issues. The preliminary assessment of the Office of Management and Budget (OMB) is that the rule may raise novel policy issues, in that it represents a potentially new approach to public input.

2. Regulatory Flexibility Act

The Department certifies that the proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The proposed rule will not affect a substantial number of small entities. According to the Small Business

Administration, for NAICS code 221111 hydroelectric power generation, a firm is small if, including its affiliates, its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours. Over half of the Commission-licensed projects are less than 5 megawatts of capacity (542 of 1009). Over 80 percent of Commission licensees hold only one license (483 of 598). Despite the fact that the regulated community of Commission licensees does include a substantial number of small entities, the number of affected entities in a given year is likely to be small. During the period from 2001 to 2003, of 108 licenses issued by the Commission, 13 contained conditions or prescriptions from the Department of the Interior. Eight of these 13 affected small entities.

More important, the effect of the proposed rule will not be significant. The only action required of any entity under the proposed rule is the preparation and submission of an appeal. Applicants already prepare and submit comments on conditions pursuant to the MCRP, which is currently in effect as a policy.

To file an appeal, the applicant would simply collect information already in the record of the proceeding before the Commission, and put it together in the format described in the proposed rule. Since the decision to appeal is entirely at the discretion of the applicant, that cost will only be incurred when an applicant decides the cost will be justified by the benefits of the process. For these reasons, the proposed rule will not have a significant economic effect.

3. 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 does not have an annual effect on the economy of $100 million or more. (See conclusion under Section 1 above.) This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. A public review process and administrative appeals process for the Department's hydropower conditions and prescriptions will not affect costs or prices. This rule will not have significant, adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments in the aggregate or on the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. State, local, and tribal governments routinely file comments on the Department's licensing conditions under the existing MCRP policy. The new appeal opportunity will only be available to the license applicant, and, as discussed above, the costs to the applicant will be small and the Department expects that there will be an improvement in ensuring consistency and transparency. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. The Departmental conditions and prescriptions included in hydropower licenses relate to operation of hydropower facilities on resources not owned by the applicant (public waterways and/or public lands). Therefore, this rule will not result in a taking of private property, and a takings implication assessment is not required.

6. Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. There is no foreseeable effect on States of codifying procedures for public review of Departmental conditions and prescriptions, or providing the applicant with an opportunity for an administrative appeal of such. The rule, which governs only the Department's responsibilities in hydropower licensing, does not have substantial direct effects on the States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among the various levels of government. The rule does not preempt State law. Therefore, a Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The proposed rule has been reviewed and provides clear language as to what is allowed and what is prohibited. Litigation regarding Commission hydropower licenses currently begins with rehearing at the Commission, and then moves to Federal appeals court. By offering public review and an administrative appeal of conditions and prescriptions imposed by the Department, the rule will likely result in a decrease in the number of proceedings that are litigated. In addition, it is not anticipated that more than an average of two appeals will be filed in any given year.

8. Paperwork Reduction Act

The proposed rule contains provisions that would collect information from the public and therefore requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995. According to the PRA, a Federal 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 that indicates OMB approval. For this approval, Form 83–I and supporting information have been submitted to OMB.

The purpose of the information collection in this rulemaking is to provide an opportunity for license applicants to appeal mandatory conditions and prescriptions before licenses are issued by the Commission. It is estimated that an average of six new licenses with mandatory conditions will be issued each year for the next few years, and that an average of two license applicants will appeal the mandatory conditions each year. It is estimated that the burden for filing an appeal under Subpart B of the proposed rulemaking is 200 hours; thus, the total information collection burden of this rulemaking would be about 400 hours per year.

As required by OMB regulations at 5 CFR 1320.8(d)(1), on behalf of OMB, the Department is requesting your comments on this information collection. In particular, your comments to OMB should address: (1) Whether the proposed collection of information is necessary and appropriate for its intended purpose; (2) the accuracy of our estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden on the respondents of the collection of information, including the possible use of automated collection techniques or other forms of information technology.

OMB must make a decision concerning approval of this collection of information no sooner than 30 days, but no later than 60 days, after the proposed rule is published in the **Federal**

Register. Therefore, your comments on the information collection are best assured of having their maximum effect if OMB receives them within 30 days of publication. Your comments should be directed to OMB via facsimile or e-mail as indicated in the **ADDRESSES** section of this rulemaking. Please also send a copy of your comments to us at the address indicated in the **ADDRESSES** section.

If you wish to obtain a copy of our full submission to OMB requesting approval of this information collection, which includes the OMB form 83–I and supporting statement, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. A copy will be sent to you at no charge.

9. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The Department has determined that the proposed rule is categorically excluded from review under section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)). The Department has made this determination pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, which excludes ''policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.'' In addition, the Department found that the proposed rule would not significantly affect the 10 criteria for exceptions to categorical exclusion listed in 516 DM 2, Appendix 2. Therefore, a detailed statement under NEPA is not required.

10. Government-to-Government Relationship With Indian Tribes

In accordance with the President's 1994 Executive Memorandum, Government-to-Government Relations with Native American Tribal Governments, 59 FR 22951 (April 29, 1994), supplemented by Executive Order No. 13,175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249 (November 6, 2000), and 512 DM 2, the Department has assessed the impact of the proposed rule on tribal trust resources and has determined that it does not directly affect tribal resources. The proposed rule is of a procedural and administrative nature. It should be clear, however, that individual Departmental 4(e) conditions and section 18 fishways may directly affect tribal resources, and the Department will consult with tribal governments when developing conditions and prescriptions that directly affect those tribal trust resources. The Department will consult with Indian tribes during the MCRP and at appropriate times during the appeal process.

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

In accordance with Executive Order 13211, the Department has determined that the proposed rule will not have substantial direct effects on energy supply, distribution, or use, including shortfall in supply or price increase. Recent analysis by the Commission has found that on average installed capacity increased through licensing by 4.06 percent, and the average annual generation loss, attributable largely to increased flows to protect aquatic resources, was 1.59 percent.[5] Since the licensing process itself has such a modest energy impact, this proposed rule, which affects only the Department's review and appeal policies, is not expected to have a significant impact (*i.e.*, reductions in electricity production in excess of 1 billion kilowatt-hours per year or in excess of 500 megawatts of installed capacity).

12. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. The Department invites your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Mail Stop 7229, Department of the Interior, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*.

[5] Report on Hydroelectric Licensing Policies, Procedures, and Regulations, Comprehensive Review and Recommendations Pursuant to Section 603 of the Energy Act of 2000, prepared by the staff of the Federal Energy Regulatory Commission, May 2001.

List of Subjects in 43 CFR Part 25

Administrative practice and procedure, Indians—lands; National parks, Public land, Water resources, Wildlife.

Dated: September 2, 2004.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget, U.S. Department of the Interior.

For the reasons set forth in the Preamble, part 25 of Title 43 of the Code of Federal Regulations is proposed to be added, as set forth below.

PART 25—HYDROPOWER LICENSING; CONDITIONS AND PRESCRIPTIONS

Subpart A—Mandatory Conditions Review Process

Sec.
25.1 What is the purpose of this subpart?
25.2 What terms are used in this subpart?
25.3 What is the Mandatory Conditions Review Process?
25.4 When is the Mandatory Conditions Review Process triggered?
25.5 When will the Department file its preliminary conditions or prescriptions?
25.6 When may the public review and comment on the Department's preliminary conditions and prescriptions?
25.7 When will the Department submit modified conditions and prescriptions to FERC?
25.8 What process will be used to review conditions and prescriptions submitted as part of an offer of settlement, whether in an alternative licensing process or otherwise?

Subpart B—Procedures for Appeal of Mandatory Conditions and Prescriptions in FERC Hydropower Licensing

25.50 What is the purpose of this subpart?
25.51 What terms are used in this subpart?
25.52 Who may appeal?
25.53 What limits are there to raising an issue on appeal?
25.54 When is an appeal timely?
25.55 Where is the appeal filed?
25.56 What must the appeal include?
25.57 Who may comment on an appeal?
25.58 Who will review the appeal?
25.59 How will the appeal be reviewed?
25.60 How will results of the review be made available?

Authority: 5 U.S.C. 301; 16 U.S.C. 3, 668 dd(d)(1); 25 U.S.C. 2, 9; 43 U.S.C. 1201, 1740.

Subpart A—Mandatory Conditions Review Process

§ 25.1 What is the purpose of this subpart?

This subpart describes the process for the public to review and comment on mandatory conditions and prescriptions

developed by the Department of the Interior for inclusion in a hydropower license issued under subchapter I of the Federal Power Act, 16 U.S.C. 791–823c. The authority to develop these conditions and prescriptions is granted by sections 4(e) and 18 of the Federal Power Act, 16 U.S.C. 797(e) and 811, which authorize the Secretary to condition hydropower licenses issued by the Federal Energy Regulatory Commission and to prescribe fishways.

§ 25.2 What terms are used in this subpart?

As used in this subpart:

Bureau means the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Reclamation, or the Bureau of Indian Affairs.

Department means the U.S. Department of the Interior or one or more of its constituent bureaus.

FERC means the Federal Energy Regulatory Commission.

FPA means the Federal Power Act, 16 U.S.C. 791–823c.

REA Notice means a notice issued by FERC that states that a license application is Ready for Environmental Analysis.

§ 25.3 What is the Mandatory Conditions Review Process?

The Mandatory Conditions Review Process is a process that allows the public to review and comment on preliminary conditions and prescriptions that the Department of the Interior submits for inclusion in a hydropower license issued under subchapter I of the FPA. The process is open to the license applicant, all participants in the licensing process, and the public generally, and is limited to conditions and prescriptions submitted pursuant to sections 4(e) and 18 of the FPA, 16 U.S.C. 797(e) and 811. It does not apply to recommendations filed under sections 10(a) and 10(j) of the FPA, 16 U.S.C. 803(a) and (j).

§ 25.4 When is the Mandatory Conditions Review Process triggered?

The Mandatory Conditions Review Process is triggered when FERC issues a notice indicating that a license application filed pursuant to subchapter I of the FPA, is ready for environmental analysis (REA Notice).

§ 25.5 When will the Department file its preliminary conditions or prescriptions?

(a) Unless the circumstances in paragraphs (b) or (c) of this section apply, the Department will file its preliminary conditions and prescriptions with FERC within 60 days after FERC issues its REA Notice. The Department will include a rationale for the conditions and prescriptions, reference relevant documents already filed with FERC, and provide a schedule of when the preliminary conditions and prescriptions will be modified. The Department's submission to FERC will enable the public to submit comments and new supporting evidence on the preliminary conditions and prescriptions within the comment period provided in §25.6(a).

(b) Exceptional circumstances, such as the filing of competing applications for a hydropower license, may preclude the Department from filing preliminary conditions and prescriptions within 60 days after FERC issues its REA Notice. When exceptional circumstances occur, the Department will work with FERC and the applicant(s) on a case-by-case basis to ensure that an opportunity for public review and comment is provided.

(c) If the Department determines that it does not have sufficient information, such as completed reports on required studies or information on technical feasibility, to support the filing of preliminary conditions and prescriptions, it may exercise its authority under sections 4(e) and 18 of the FPA by reserving the authority to submit conditions and prescriptions at a later date. In these situations, instead of filing preliminary conditions and prescriptions, the Department will file with FERC its reservation of authority within 60 days after FERC issues its REA Notice and will provide the reasons for this action. The Department will accept comments on its reservation of authority.

§ 25.6 When may the public review and comment on the Department's preliminary conditions and prescriptions?

(a) The first opportunity for the public to review and comment on the Department's preliminary conditions and prescriptions is the 45-day period immediately following the Department's submission of preliminary conditions and prescriptions to FERC.

(b) A second opportunity for public review and comment on the Department's preliminary conditions and prescriptions can occur during the period(s) provided by FERC for public comment under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, on FERC's draft NEPA document for the license. All comments on the Department's preliminary conditions and prescriptions that are submitted along with comments on the draft NEPA document (or environmental assessment if no draft NEPA document is prepared) should be identified as such.

(c) Comments, which should include supporting evidence, submitted under either paragraph (a) or (b) of this section should be sent directly to the office identified in the Department's submission of preliminary conditions and prescriptions.

(d) Comments submitted during the comment period set forth in paragraph (a) of this section need not be resubmitted during the comment period set forth in paragraph (b) of this section.

§ 25.7 When will the Department submit modified conditions and prescriptions to FERC?

(a) After reviewing FERC's draft NEPA document (or environmental assessment if no draft NEPA document is prepared) and all comments timely received on the Department's preliminary conditions and prescriptions, and after coordinating with Indian tribes and other resource agencies, the Department will modify its preliminary conditions and prescriptions, as needed, and respond to comments.

(b) Based on this review, the Department will submit modified conditions and prescriptions to FERC within 60 days after the close of the comment period in § 25.6(b) unless substantial or new information is received during this comment period that requires additional time for review. In those infrequent situations, the Department will inform FERC, all commenters, and all persons on the FERC service list for the proceeding why such additional time is needed and when it will submit the modified conditions and prescriptions.

(c) The submission described in § 25.7(b) will include the Department's response to comments, an index of the Department's administrative record, and a schedule for filing its administrative record with FERC.

§ 25.8 What process will be used to review conditions and prescriptions submitted as part of an offer of settlement, whether in an alternative licensing process or otherwise?

(a) If the Department submits to FERC preliminary or modified conditions and prescriptions that are not part of an offer of settlement, the procedures in §§25.6 and 25.7 respectively will apply.

(b) If the Department submits to FERC conditions and prescriptions that are part of an offer of settlement, the following procedures will apply:

(1) The Department will review any comments and supporting evidence submitted in response to FERC's notice calling for comments on the offer of settlement that directly address the Department's agreed-upon mandatory conditions and prescriptions.

(2) If the comments are substantive, raise issues not previously identified, and may require changes to the agreed-upon mandatory conditions and prescriptions and/or the offer of settlement, the Department will, in accordance with any applicable settlement communications protocol, discuss the comments and their appropriate resolution with the other settlement participants. If the Department determines, after discussion with the other settlement participants, that the comments warrant a change in the agreed-upon mandatory conditions and prescriptions, the Department will modify the agreed-upon mandatory conditions and prescriptions.

(3) The Department will submit to FERC any changes to the agreed-upon mandatory conditions and prescriptions that are made as a result of comments received under paragraph (b)(2) of this section.

(4) The process described in this paragraph (b) will be the only opportunity for review of the Department's agreed-upon mandatory conditions and prescriptions submitted pursuant to an offer of settlement.

Subpart B—Procedures for Appeal of Mandatory Conditions and Prescriptions in FERC Hydropower Licensing

§ 25.50 What is the purpose of this subpart?

The purpose of this subpart is to describe the appeals process that an applicant for a hydropower license may use to obtain administrative review of modified conditions and prescriptions.

§ 25.51 What terms are used in this subpart?

Applicant means a person or legal entity applying to FERC for a hydropower license at a FERC jurisdictional facility under the Federal Power Act, 16 U.S.C. 791–823c.

Bureau means the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Reclamation, or the Bureau of Indian Affairs.

Department means the U.S. Department of the Interior or one or more of its constituent bureaus.

FERC means the Federal Energy Regulatory Commission.

Indian tribe means a federally recognized Indian tribe.

Mandatory Conditions Review Process (MCRP) means the process described in 43 CFR Part 25, Subpart A.

Modified conditions and prescriptions means mandatory conditions and prescriptions developed for inclusion in a hydropower license pursuant to sections 4(e) and 18 of the Federal Power Act, 16 U.S.C. 797(e) and 811, as modified through the MCRP and filed with FERC after the close of the comment period on the draft National Environmental Policy Act (NEPA) document (or environmental assessment if no draft NEPA document is prepared).

§ 25.52 Who may appeal?

This appeals process is available to applicants for a hydropower license in proceedings in which the Department establishes one or more modified conditions or prescriptions.

§ 25.53 What limits are there to raising an issue on appeal?

The Department's issuance of one or more modified conditions or prescriptions for inclusion in a hydropower license pursuant to sections 4(e) and 18 of the Federal Power Act, 16 U.S.C. 797(e) and 811, may be appealed if the specific issue was previously raised during the MCRP and in the FERC record, or if the modified condition or prescription was primarily based on new information, including technical and scientific data not available when the applicant commented on the Department's preliminary conditions and prescriptions. Modified conditions or prescriptions issued by the Bureau of Reclamation specifically concerning dam safety or security may not be appealed. Modified conditions or prescriptions agreed to in a settlement agreement may not be appealed through this process. Appeals will be reviewed pursuant to the process set forth in §§ 25.55 and 25.59.

§ 25.54 When is an appeal timely?

(a) An appeal is timely if received by the Office of Environmental Policy and Compliance (OEPC) within 30 calendar days after the date the Department files its modified conditions and prescriptions with FERC. The date of the Department's filing with FERC is determined by the date stamp affixed by FERC to the modified conditions and prescriptions.

(b) No extensions of this deadline will be granted.

(c) An appeal not received in a timely manner will be dismissed.

(d) In computing the period of time for filing an appeal, the first day shall be the day after the date affixed by FERC to the modified conditions and prescriptions. The last day of the 30-day period is included in the time period, unless it is a Saturday, Sunday, Federal legal holiday designated at 5 U.S.C. 6103, or other nonbusiness day, in which event the period does not close until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or nonbusiness day.

§ 25.55 Where is the appeal filed?

(a) An appeal must be filed with the Office of Environmental Policy and Compliance (OEPC), U.S. Department of the Interior, MS 2342, 1849 C St., NW, Washington, DC 20240. The appeal is deemed filed when it is received by OEPC at this address. Upon receipt of the appeal, OEPC will date-stamp the appeal, forward it to the Assistant Secretary (or Assistant Secretaries) with supervisory responsibility over the bureau (or bureaus) that developed the modified conditions or prescriptions, and provide appropriate notice to FERC. The Assistant Secretary (or Secretaries) will designate a professional Departmental review team from a previously authorized, standing pool of Department hydropower professionals to prepare, as appropriate, a substantive assessment of the appeal. The professional review team cannot be comprised of individuals who developed or approved the preliminary or modified conditions or prescriptions that are under appeal, but may consult with Departmental staff.

(b) The applicant shall simultaneously file an information copy of the appeal with FERC. The applicant shall serve a copy of the appeal on parties included on FERC's service list for the license proceeding. The applicant shall certify this service in the appeal filed with OEPC.

(c)(1) The review team will conduct an initial evaluation to determine if the appeal:

(i) Is properly filed consistent with §§ 25.52, 25.53, 25.54, and this section; and

(ii) Contains the required documentation as set forth in § 25.56; and

(iii) Proposes a remedy that is within the Secretary's authority.

(2) If either paragraph (c)(1)(i), (ii), or (iii) is not the case, then the appeal shall be dismissed. Otherwise, the appeal shall be processed.

§ 25.56 What must the appeal include?

For each condition or prescription challenged, the appeal must include the following components. Appeals that do not provide the following information may be dismissed.

(a) A concise statement of the specific reasons for appeal, referencing and meeting at least one of the criteria in § 25.59(c);

(b) A demonstration that the specific issues on appeal were raised during the

MCRP and in the FERC record. If the Department's modified conditions were primarily based on new information that was not available when the applicant commented on the Department's preliminary conditions and prescriptions, a clear identification of the condition or prescription that was modified and the new information on which it was based;

(c) A summary of consultation with the Department, including a statement of disagreements regarding studies, resource impacts, or proposed protection, mitigation, or enhancement measures, as appropriate to the matter or matters being appealed;

(d) A proposed alternative for the appealed condition or prescription which is supported by substantial evidence in the record, is set forth in at least the same level of detail as the appealed condition or prescription, and is reasonably related to alternatives raised during the MCRP and in the FERC record;

(e) An assessment of the effects of the proposed alternative on fish, wildlife, and Indian trust resources; and

(f) Supplementary information that includes the following, as applicable:

(1) The most recent Form 1 filing (if investor-owned utility) or Form 412 filing (if publicly-owned applicant) filing; and if all or part of the basis of the appeal is adverse effect on electricity generation, power revenues, and/or the economic viability of the project,

(i) Data on the most recent five years of system load for the project, including an explanation of any anomalies attributable to a specific time frame or hydrologic condition; and

(ii) An analysis that demonstrates, using historic cost and load data and documented *pro forma* adjustments for future operations, the impacts of the Department's proposed condition or prescription on the cost and operational characteristics of the system, and which provides a comparison to the applicant's proposal.

(2) [Reserved]

§ 25.57 Who may comment on an appeal?

Indian tribes, States, Federal agencies, and the public may comment on an appeal. Comments shall be sent to OEPC at the address specified in § 25.55(a), and must be received by OEPC not later than 21 calendar days from the date on which the appeal was served, as documented in the certification of service submitted by the applicant pursuant to § 25.55(b).

§ 25.58 Who will review the appeal?

The Assistant Secretary (or Assistant Secretaries) with supervisory authority over the bureau establishing the modified condition or prescription will review the appeal. If an applicant appeals the modified conditions or prescriptions of more than one bureau in the same licensing project, then the Assistant Secretaries with supervisory authority over the bureaus shall coordinate their consideration of appeals to assure consistency. If more than one Assistant Secretary is involved and agreement among them is not reached, the appeal will be resolved by the Secretary or the Secretary's designee.

§ 25.59 How will the appeal be reviewed?

(a) The Assistant Secretary's review authority is *de novo.*

(b) The Assistant Secretary will resolve the appeal after considering, among other things, the materials submitted by the applicant pursuant to § 25.56, any substantive assessment prepared by the professional review team designated pursuant to § 25.55(a), any comments submitted pursuant to § 25.57, and any Federal, State, or tribal conditions, prescriptions, or water quality certifications, and pertinent portions of the administrative record filed with FERC in support of the modified conditions or prescriptions.

(c) The Assistant Secretary will assess whether the applicant has demonstrated that:

(1) The modified conditions or prescriptions conflict with conditions or prescriptions of another Department, or conflict with those of another bureau (or bureaus); or

(2) An alternative mitigation measure, preferred by the applicant, is as effective as that of the Department; or

(3) The modified conditions or prescriptions are not reasonably related to the impacts of the project because they mandate a level of mitigation that is inappropriate given the level of impacts attributable to the project.

(d) Before an Assistant Secretary adopts an alternative condition or prescription, he or she must also find that the alternative:

(1) Is supported by the technical and scientific record submitted with the appeal or compiled in the FERC proceeding;

(2) Provides protection consistent with the Department's trustee responsibilities for Indian trust resources;

(3) Provides protection consistent with the Department's responsibilities for fish, wildlife, and cultural resources; and

(4) Will not conflict with conditions or prescriptions of another Department, or conflict with those of another bureau (or bureaus).

(e) The Assistant Secretary will resolve the appeal and file new modified conditions or prescriptions or a notice that the previously filed conditions or prescriptions will not be changed with FERC within 60 days of receipt by OEPC of the appeal.

§ 25.60 How will results of the review be made available?

(a) Findings and results of the review of the Assistant Secretary will be collected and saved by OEPC in a retrievable format, and made available to the public.

(b) Applicants and FERC will be informed promptly by the Department of findings made by the Assistant Secretary (or Assistant Secretaries). All relevant supporting information, to the extent not already part of the FERC administrative record, will be filed with FERC within 15 calendar days of the Assistant Secretary's filing of the results of the review with FERC.

[FR Doc. 04–20392 Filed 9–8–04; 8:45 am]

BILLING CODE 4310–RK–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2672; MB Docket No. 04–338; RM–11061]

Radio Broadcasting Services; Nevada City, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Dana J. Puopolo requesting the allotment of Channel 297A at Nevada City, California as that community's first FM commercial broadcast service. The coordinates for Channel 297A at Nevada City are 39–18–00 NL and 121–00–00 WL. There is a site restriction 4.5 kilometers (2.8 miles) north of the community.

DATES: Comments must be filed on or before October 18, 2004, and reply comments on or before November 2, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Dana J.

Puopolo, 2134 Oak Street, Unit C, Santa Monica, California 90405.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 04–338, adopted August 25, 2004, and released August 27, 2004. The full text of this Commission notice is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 Twelfth Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

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 California, is amended by adding Nevada City, Channel 297A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–20360 Filed 9–8–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2674; MB Docket No. 04–342; RM–10732]

Radio Broadcasting Services; Paducah, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Charles Crawford requesting the allotment of Channel 234C3 at Paducah. The reference coordinates for Channel 234C3 at Paducah are 34–03–25 NL and 100–18–36 WL.

DATES: Comments must be filed on or before October 18, 2004, and reply comments on or before November 2, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205 and Gene A. Bechtel, Law office of Gene Bechtel, 1050 17th Street, NW., Suite 600, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 04–342, adopted August 25, 2004, and released August 27, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

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 Texas, is amended by adding Paducah, Channel 234C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–20359 Filed 9–8–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2677; MB Docket No. 04–343; RM–10799]

Radio Broadcasting Services; Cridersville, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Dana J. Puopolo requesting the allotment of Channel 257A at Cridersville, Ohio. The coordinates for Channel 257A at Cridersville are 40–45–20 and 84–06–39. There is a site restriction 11.8 kilometers (7.3 miles) north of the community. Canadian concurrence will be requested for the allotment at Cridersville.

DATES: Comments must be filed on or before October 18, 2004, and reply comments on or before November 2, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Dana J. Puopolo, 2134 Oak Street, Unit C, Santa Monica, California 90405.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 04–343, adopted August 25, 2004, and released August 27, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

Provisions of the Regulatory Flexibility Act of l980 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 Ohio, is amended by adding Cridersville, Channel 257A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–20358 Filed 9–8–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2678; MB Docket No. 04–328, RM–11046; MB Docket No. 04–329, RM–11050; MB Docket No. 04–330, RM–11051; MB Docket No. 04–331, RM–11053; MB Docket No. 04–332, RM–11054; MB Docket No. 04–333, RM–11055; MB Docket No. 04–334, RM–11056; MB Docket No. 04–335, RM–11057; MB Docket No. 04–336, RM–11058; MB Docket No. 04–337, RM–11059]

Radio Broadcasting Services; Americus, GA; Cambria, CA; Carbon, TX; Coachella, CA; Dulac, LA; Fallon Station, NV; King City, CA; Northport, AL; and Washington, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes ten new FM broadcast allotments in Americus, Georgia; Dulac, Louisiana; Palacios, Texas; Washington, Kansas; King City, California; Fallon Station, Nevada; Coachella, California; Cambria, California; Carbon, Texas; and Northport, Alabama. The Audio Division, Media Bureau, requests comment on a petition filed by SSR Communications, Inc., proposing the allotment of Channel 295A at Americus, Georgia, as the community's sixth local aural transmission service. Channel 295A can be allotted to Americus in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.4 kilometers (1.5 miles) northwest of the central city coordinates for Americus. The reference coordinates for Channel 295A at Americus are 32–04–51 North Latitude and 84–15–20 West Longitude. *See* **SUPPLEMENTARY INFORMATION,** *infra.*

DATES: Comments must be filed on or before October 18, 2004, and reply comments on or before November 2, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: SSR Communications, Inc., 5270 West Jones Bridge Road, Norcross, Georgia 30092–1628; Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205; Andrew Shafer, 3951 Regent Avenue, Cincinnati, Ohio 45212; Daniel R. Feely, 682 Palisade Street, Pasadena, California; Linda A. Davidson, 2134 Oak Street, Unit C, Santa Monica, California 90405; Dana J. Puopolo, 2134 Oak Street, Unit C, Santa Monica, California 90405; and TTI, Inc., P.O. Box 70937, Tuscaloosa, Alabama 35407.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 04–328, 04–329, 04–330, 04–331, 04–332, 04–333, 04–334, 04–335, 04–336 and 04–337, adopted August 25, 2004 and released August 27, 2004. The full text of this Commission document 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, 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

The Audio Division requests comments on a petition filed by SSR Communications, Inc., proposing the allotment of Channel 242A at Dulac, Louisiana, as the community's first local aural transmission service. Channel 242A can be allotted to Dulac in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.0 kilometers (3.7 miles) southwest of Dulac. The reference coordinates for Channel 242A at Dulac are 29–21–09 North Latitude and 90–45–36 West Longitude.

The Audio Division requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 264A at Palacios, Texas, as the community's second local aural transmission service. Channel 264A can be allotted to Palacios in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.2 kilometers (7.6 miles) southeast of Palacios. Since Palacios is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence from the Mexican government has been requested. The reference coordinates for Channel 264A at Palacios are 28–36–26 North Latitude and 96–10–00 West Longitude.

The Audio Division requests comment on a petition filed by Andrew Shafer proposing the allotment of Channel 271A at Washington, Kansas, as the community's first local aural transmission service. Channel 271A can be allotted to Washington in compliance

with the Commission's minimum distance separation requirements at the city's reference coordinates. The reference coordinates for Channel 271A at Washington are 39–40–05 North Latitude and 97–03–02 West Longitude.

The Audio Division requests comment on a petition filed by Daniel R. Feely proposing the allotment of Channel 275A at King City, California, as the community's fourth local aural transmission service. Channel 275A can be allotted to King City in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.3 kilometers (0.2 miles) southwest of King City. The reference coordinates for Channel 275A at King City are 36–12–40 North Latitude and 121–07–40 West Longitude.

The Audio Division requests comment on a petition filed by Linda A. Davidson proposing the allotment of Channel 287C at Fallon Station, Nevada, as the community's first local aural transmission service. Channel 287C can be allotted to Fallon Station in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.1 kilometers (12.5 miles) north of Fallon Station. The reference coordinates for Channel 287C at Fallon Station are 39–36–00 North Latitude and 118–43–12 West Longitude.

The Audio Division requests comment on a petition filed by Dana J. Puopolo proposing the allotment of Channel 278A at Coachella, California, as the community's third local aural transmission service. Channel 278A can be allotted to Coachella in compliance with the Commission's minimum distance separation requirements at the city's reference coordinates. Since Coachella is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested. The reference coordinates for Channel 278A at Coachella are 33–40–49 North Latitude and 116–10–23 West Longitude.

The Audio Division requests comment on a petition filed by Linda A. Davidson, proposing the allotment of Channel 293A at Cambria, California, as the community's third local aural transmission service. Channel 293A can be allotted to Cambria in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.4 kilometers (3.4 miles) north of Cambria. The reference coordinates for Channel 293A at Cambria are 35–36–36 North Latitude and 121–06–00 West Longitude.

The Audio Division requests comment on a petition filed by Charles Crawford proposing the allotment of Channel 238A at Carbon, Texas, as the community's first local aural transmission service. Channel 238A can be allotted to Carbon in compliance with the Commission's minimum distance separation requirements at the city's reference coordinates. The reference coordinates for Channel 238A at Carbon are 32–16–14 North Latitude and 98–49–42 West Longitude.

The Audio Division requests comment on a petition filed by TTI, Inc. proposing the allotment of Channel 286A at Northport, Alabama, as the community's second local aural transmission service. Channel 286A can be allotted to Northport in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.6 kilometers (5.4 miles) southwest of Northport. The reference coordinates for Channel 286A at Northport are 33–11–02 North Latitude and 87–39–10 West Longitude.

Provisions of the Regulatory Flexibility Act of l980 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* contact.

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]

1. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Channel 286A at Northport.

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 293A at Cambria; Channel 278A at Coachella; and Channel 275A at King City.

3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Channel 295A at Americus.

4. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Washington, Channel 271A.

5. Section 73.202(b), the Table of FM allotments under Louisiana, is amended by adding Dulac, Channel 242A.

6. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Fallon Station, Channel 287C.

7. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Carbon, Channel 238A, and Channel 264A at Palacios.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–20357 Filed 9–8–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 221

[Docket No. 040812238–4238–01; I.D. 080904D]

RIN 0648–AS55

Procedures for Review of Mandatory Fishway Prescriptions Developed by the Department of Commerce in the Context of Federal Energy Regulatory Commission's Hydropower Licensing

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a public review process for mandatory fishway prescriptions (prescriptions) NMFS develops, pursuant to its authority under the Federal Power Act, for inclusion in hydropower licenses issued by the Federal Energy Regulatory Commission (FERC). This proposed rule is intended to supercede and codify NMFS' existing policy governing review of its prescriptions, to solicit public comments on how the process has worked during the trial period of implementation and to determine whether any further revision is warranted. The public review process will enable the public to comment on the Department's preliminary prescriptions, and to provide information to assist the Department in considering any needed modifications

of prescriptions to be included in FERC's final license.

DATES: Written comments must be received no later than November 8, 2004.

ADDRESSES: You may submit comments by any of the following methods:

• E-mail: NMFS.MCRP@noaa.gov. Include in the subject line the following identifier: RIN 0648–AS55.

• Federal e-Rulemaking Portal: *http://www.regulations.gov*.

• Mail: Written comments must be sent to: Thomas Bigford, Chief, Habitat Protection Division, Office of Habitat Conservation, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. To ensure proper identification of your comments, include in the subject line the name, date and **Federal Register** citation of this document.

FOR FURTHER INFORMATION CONTACT: Melanie Harris at 301–713–4300, ext. 154.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to Part I of the Federal Power Act (FPA), 16 U.S.C. 791(a) *et seq.*, the Department of Commerce (DOC) was granted certain authorities in the licensing process for non-federal hydroelectric generating facilities. The DOC, acting through NMFS, provides input to the Federal Energy Regulatory Commission (FERC) on a number of issues related to the license application. Among others, NMFS' authorities include the authority to prescribe fishways pursuant to section 18 of the FPA, 16 U.S.C. 811.

The FPA requires that section 18 prescriptions be included in any license issued by FERC. The mandatory nature of these prescriptions was upheld by Federal court in *American Rivers* v. *FERC*, 201 F.3d 1186 (9th Cir. 1999) and *American Rivers* v. *FERC*, 129 F.3d 99 (2d Cir. 1997). After a license has been issued, the license, including the NMFS' prescriptions, is subject to rehearing before the FERC and subsequent judicial review under the FPA's appeal procedures, which place exclusive jurisdiction in the Federal Court of Appeals, 16 U.S.C. 825l(b).

NMFS' practice has been to try to work closely with license applicants in developing prescriptions. However, licensees and others have expressed interest in having NMFS consider public input and comments on these prescriptions through a standardized review process. Such a process would provide an opportunity for interested parties to provide comment on the prescriptions.

The DOC, acting through NMFS, jointly with the Department of the Interior based on shared authority under section 18 of the FPA (together with Interior's authority under section 4(e) of the FPA), published two **Federal Register** notices while developing what initially was intended to be issued as a joint policy and procedure for public review of mandatory prescriptions (Mandatory Conditions Review Process or MCRP).

First, on May 26, 2000 (65 FR 34151), the Departments published a **Federal Register** notice soliciting public comments on the Departments' proposed policy establishing a review process for mandatory conditions and prescriptions they develop as part of FERC's hydropower licenses. Second, on December 13, 2000 (65 FR 77889), the Departments solicited public comments on a new process for public review of, and comment on, mandatory conditions and prescriptions concerning hydropower licenses. Refer to the December 13, 2000, **Federal Register** publication for a summary of the significant comments submitted in response to the May 26, 2000 notice, and the Departments' responses. In response to the December 13, 2000 notice, the Departments received 18 sets of comments representing a broad range of interests. The January 2001 joint MCRP, including responses to the public comments received on the December 13, 2000 (65 FR 77889) **Federal Register** notice was posted on the NMFS website, at the following location: *http://www.nmfs.noaa.gov/habitat/habitatprotection/pdf/FINAL%20MCR.pdf*.

The proposed rule is intended to codify an MCRP for NMFS, and to solicit public comments to inform NMFS' review process. At the same time, in a parallel proposed rule, the Department of the Interior proposes to codify an MCRP, while also proposing to add an administrative appeals process, in lieu of a rehearing stage. The DOC and the Department of the Interior employ different formats for regulations, but in all other aspects, the MCRP portions of the two proposed rules are intended to be the same.

The proposed MCRP rule published herein applies to NMFS' section 18 of the FPA prescriptions, under the FPA filed in connection with any of the following three licensing processes provided by FERC: the Traditional Licensing Process (TLP), the Alternative Licensing Process (ALP) or the Integrated Licensing Process (ILP). NMFS' recommendations under sections 10(a) and 10(j) of the FPA are subject to review by FERC under Commission procedures, and are not governed by the MCRP.

NMFS hereby is also soliciting public comments on how its process for developing prescriptions under Section 18 has worked. Based on all comments received, NMFS will determine whether any further revision is warranted, and publish a final rule implementing the MCRP.

II. Changes from Existing MCRP

NMFS notes that the proposed rule codifies the MCRP as it has implemented during the trial period since January 2001, with the following changes. The existing MCRP provides 60 days for comments on NMFS' preliminary fishway prescriptions. In this rulemaking, 45 days has been selected to conform to the reply comments time period in FERC's ILP. See section 5.23 of 104 FERC 61,109 (July 23, 2003). In addition, the proposed rule addresses the need for special review procedures in the context of negotiated settlements, regardless of whether a settlement is reached under the TLP, ALP or ILP.

III. Administrative Review Mechanism

In the earlier joint responses to comments on the draft MCRP policy, the Departments indicated that numerous comments requested the implementation of an administrative appeals process, in addition to the review stages provided under the draft MCRP. The Departments determined at that time that an appeals process was unwarranted. However, given now that NMFS and other participants in the FERC licensing process have more than three years of experience under the MCRP, and being aware of the Department of Interior's separate proposal for an administrative appeals process to be implemented in lieu of the MCRP's rehearing stage, NMFS is again considering the possible addition of a mechanism for administrative review of its prescriptions within NMFS, including the relationship of any such mechanism to the existing FERC rehearing process, and solicits public comments. NMFS invites commenters to consider differences in the size of the case load, agency staffing, and scope of authority, relative to the Department of Interior, in commenting on the need for an additional administrative review mechanism, and the form such a review mechanism should take.

In addition, NMFS is aware of a proposal for amending the Federal Power Act that is currently being considered by Congress. The legislative proposal appears in the hydropower title passed by the House in H.R. 6 and

by the Senate in S. 14 in the 108th Congress. The same language also appears in S. 2095 which was introduced in the Senate on February 12, 2004. NMFS invites comment about whether elements of the legislative proposal should be incorporated into this rulemaking.

IV. Procedural Requirements

A. National Environmental Policy Act

NMFS has analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act (NEPA). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment because it only provides notice and comment on prescriptions. The prescriptions will be part of FERC's NEPA analysis. NMFS has determined that the issuance of this proposed rule qualifies for a categorical exclusion as defined by NOAA Administrative Order 216–6, Environmental Review Procedure.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

The Chief Counsel for Regulation of the DOC certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The proposed rule will not affect a substantial number of small entities. According to the Small Business Administration, for NAICS code 221111 hydroelectric power generation, a firm is small if, including its affiliates, its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours. During the period from 2001 to 2003, of 108 licenses issued by FERC, only 4 contained section 18 prescriptions from NMFS, and none of these projects was owned or operated by small entities as defined above. Based on FERC's projected licensing schedule, reflecting licenses due to expire over the next several decades, there is no reason to expect that the currently small percentage of licenses issued subject to NMFS' section 18 authority will significantly change, or that of these projects, a significant number will be licensed to small entities. Furthermore, in the event that NMFS, in the future, issued a Section 18 prescription for a project licensed to one or more small entities, the effect of the proposed rule would not be significant. The proposed rule provides a formal opportunity for public review of and comment on prescriptions developed by NMFS as part of FERC's hydropower licensing process, but does not mandate or determine the effects of the fishway prescriptions themselves. All fishway prescriptions are considered on a case-by-case basis and are made part of FERC's license decision, and any licenses that would have significant effects would need to undergo public review pursuant to the National Environmental Policy Act. For these reasons, the proposed rule will not have a significant economic effect. As a result, a regulatory flexibility analysis was not prepared.

C. Regulatory Planning and Review

This document is a significant rule. Though this rule will not have an adverse effect or an annual effect of $100 million or more on the economy, the preliminary assessment of the Office of Management and Budget (OMB) is that the rule may represent a novel approach to public input, it may serve as a model for future rulemakings, and it may have interagency implications. Therefore, the rule will be reviewed by the OMB under Executive Order 12866.

D. Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

1. Will not have an annual effect on the economy of $100 million or more and is expected to have no significant economic impacts.

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions and will impose no additional regulatory restraints in addition to those already in operation.

3. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The intent of this proposed rule is to provide a standardized opportunity for public comment on NMFS' prescriptions. It will impose no additional regulatory restraints to those entities already in operation. The DOC has, therefore, determined that the proposed rule will not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

E. Unfunded Mandates Reform Act

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

1. This proposed rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The proposed rule does not require any additional management responsibilities. NMFS expects that this proposed rule will not result in any significant additional expenditures by entities that participate in FERC's hydropower licensing process.

2. This proposed rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. This proposed rule is not expected to have significant economic impacts nor will it impose any unfunded mandates on other Federal, state, or local governments agencies to carry out specific activities.

F. Federalism

Executive Order 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this proposed rule; therefore, a Federalism assessment is not required. This proposed rule will not have substantial direct effects on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. No intrusion on state policy or administration is expected, roles or responsibilities of Federal or state governments will not change, and fiscal capacity will not be substantially directly affected.

G. Paperwork Reduction Act

This proposed rule does not require an information collection under the Paperwork Reduction Act. Therefore, this proposed rule does not constitute a new information collection requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

H. Essential Fish Habitat

NMFS has analyzed this proposed rule in accordance with section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and determined that the issuance of this proposed rule may not adversely affect the essential fish habitat of federally managed species, and therefore, an essential fish habitat consultation on this proposed rule is not required.

I. Government-to-Government Relationship With Tribes

This rule has been determined to not have impacts on Native American tribes, as that term is used in E.O. 13175. Because the proposed rule will standardize a review process of section 18 of the FPA fishway prescriptions, which directly affect tribal resources, NMFS will consult with Tribal governments when reviewing and responding to comments or Requests for Rehearing that directly relate to prescriptions that affect tribal resources.

List of Subjects in 50 CFR Part 221

Fisheries, Hydropower.

Dated: September 2, 2004.

Rebecca Lent,

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

For the reasons set out in the preamble, NMFS proposes to add 50 CFR part 221 to read as follows:

PART 221—HYDROPOWER LICENSE CONDITIONS

Subpart A—General Provisions

Sec.

221.1 Basis and purpose.
221.2 Definitions.

Subpart B—Procedures for Review of Mandatory Fishway Prescriptions

221.3 Traditional or Integrated Licensing Process (TLP or ILP, respectively).
221.4 Prescriptions submitted with an offer of settlement, whether in an Alternative Licensing Process (ALP) or otherwise.

Authority: 16 U.S.C. 811; Pub. L. 102–486, 1106 Stat. 3008.

Subpart A—General Provisions

§ 221.1 Basis and purpose.

(a) Section 18 of the Federal Power Act (16 U.S.C. 811), and § 1701(b) of the Energy Policy Act, Pub. L. 102–486, Title XVII, § 1701(b), Oct. 24, 1992, 1106 Stat. 3008, authorize the Secretary of Commerce to prescribe fishways that are required to be constructed, maintained and operated by hydropower licensees pursuant to mandatory conditions contained in licenses issued by the Federal Energy Regulatory Commission. The Secretary's authority under the Federal Power Act, 16 U.S.C. 791(a) *et seq.* is delegated to the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, and re-delegated to the Regional Administrators.

(b) The purpose of this part is to establish a process for the public to review and comment on mandatory fishway prescriptions formulated by NMFS pursuant to section 18 of the Federal Power Act, and section 1701(b) of the Energy Policy Act of 1992, and filed with the Federal Energy Regulatory Commission pursuant to FERC's hydropower licensing regulations set forth at 18 CFR subchapter B.

§ 221.2 Definitions.

Applicant means a person or legal entity applying to FERC for a hydropower license under the Federal Power Act, 16 U.S.C. 791a–823b.

Department means the U.S. Department of Commerce.

FERC means the Federal Energy Regulatory Commission.

Indian Tribe means a federally recognized Indian tribe identified in NMFS' section 18 prescriptions.

Mandatory Conditions Review Process (MCRP) means a process that allows the public to review and comment on preliminary prescriptions that NMFS submits for inclusion in a hydropower license issued under subchapter I of the Federal Power Act, 16 U.S.C. 791–823b. The process is open to the license applicant, all participants in the licensing process, and the public generally, and is limited to prescriptions submitted pursuant to section 18 of the FPA, 16 U.S.C. 811. It does not apply to recommendations filed under sections 10(a) and 10(j) of the FPA, 16 U.S.C. 803(a) and (j).

Modified fishway prescriptions means mandatory fishway prescriptions developed for inclusion in a hydropower license pursuant to section 18 of the Federal Power Act, 16 U.S.C. 811, as modified based on comments received according to the procedures set forth in this rule, and filed with FERC after the close of the comment period on the draft NEPA document.

NMFS means the National Marine Fisheries Service, a constituent agency of the Department of Commerce, acting by and through the Assistant Administrator for Fisheries or one of the agency's six Regional Administrators, as appropriate.

Subpart B—Procedures for Review of Mandatory Fishway Prescriptions

§ 221.3 Traditional or Integrated Licensing Process (TLP or ILP, respectively)

(a) *Notice and comment on preliminary prescriptions*--(1) *Ready for Environmental Analysis.* Even thoughNMFS will work with applicants during the prefiling and postfiling stages, the MCRP is triggered when FERC issues a notice indicating the license application is Ready for Environmental Analysis (REA). Comments, recommendations, terms and conditions, and prescriptions concerning the license application will typically be filed with FERC within 60 days from the date of the REA notice.

(2) *Filing of preliminary prescriptions.* (i) NMFS will file preliminary prescriptions within FERC's 60–day REA comment period. In order to ensure that this submission is as complete as possible and that NMFS can receive meaningful comments, NMFS needs to receive all requested information from the applicant in a timely manner, and accurate notification from FERC of when the REA notice will be issued. If settlement negotiations are on-going at the time FERC issues the REA notice, NMFS will suspend these negotiations in order to prepare preliminary prescriptions to meet FERC's deadline. When filing the preliminary prescriptions, NMFS will include a rationale for the prescriptions, reference relevant documents already filed with FERC, and provide a schedule of when the preliminary prescriptions will be modified. The schedule should indicate that NMFS will submit modified prescriptions within 60 days after the close of the draft NEPA comment period. The information that is filed in response to the REA notice is generally incorporated into FERC's National Environmental Policy Act (NEPA) analysis that establishes the framework for license conditions.

(ii) Exceptional circumstances, such as the filing of competing applications for a hydropower license, may preclude NMFS from filing preliminary prescriptions within 60 days after FERC issues its REA notice. When exceptional circumstances occur, NMFS will work with FERC and the applicant(s) on a case-by-case basis to ensure that an opportunity for public review and comment is provided.

(iii) If NMFS determines at the time of the REA notice that it does not have sufficient information, such as completed reports on required studies or information on technical feasibility, to support the filing of preliminary prescriptions, it may exercise its

authority under section 18 of the FPA by reserving the authority to submit prescriptions at a later date. In these situations, NMFS will file with FERC its reservation of authority within 60 days after FERC issues its REA Notice and will provide the reasons for this action. NMFS will accept comments on its reservation of authority.

(iv) NMFS will file the preliminary prescriptions, the schedule for modification, and reference to supporting information with FERC. NMFS also will provide this information to FERC's Service List, which includes the applicant.

(3) *Comment opportunity.* (i) The MCRP will provide a primary opportunity for notice and comment during the 45 days immediately following the submission of preliminary prescriptions under the TLP or ILP. NMFS will begin reviewing comments when received; however, no response will be made until after review of the draft NEPA document.

(ii) NMFS' preliminary submission to FERC, which is served on FERC's Service List, will invite comments and new supporting evidence on the preliminary prescriptions within a 45–day time period. Participants on the Service List and other interested stakeholders are encouraged to comment at this time. All comments on NMFS' preliminary prescriptions should be specifically identified as such and include supporting evidence.

(iii) In addition, to be responsive to persons with an interest in the preliminary prescriptions, but who have not been previously involved in the licensing process, NMFS will consider public comments provided during the draft NEPA comment period. FERC's draft NEPA document includes NMFS' preliminary prescriptions. All comments submitted to NMFS will be considered. In order to give the comments the full and thorough consideration necessary to efficiently provide FERC with the modified prescriptions, NMFS strongly encourages participants in the licensing process to submit comments during the primary notice and comment period, rather than wait until the NEPA comment period. Comments submitted on the preliminary prescriptions during the 45–day comment period need not be resubmitted during the draft NEPA comment period.

(iv) If NMFS reserves its authority, it will accept comments on this decision during the comment period. If and when the reservation of authority is invoked during the term of the license, NMFS will work with all interested parties to determine how to apply the MCRP. Because this reservation of authority has rarely been invoked, it is hard to predict how the MCRP will apply. In addition, NMFS will accept comments even when it has not been involved in the proceedings. However, it must be noted that procedural limitations may make it difficult for NMFS to become involved late in the process. Therefore, these issues should be raised to NMFS in the initial consultation phase or as early as possible in the licensing process to allow NMFS the opportunity to enter the licensing process at a meaningful stage.

(b) *Filing modified prescriptions.* (1) NMFS will review the draft NEPA document and all comments received on the preliminary prescriptions. Based on this review, NMFS will modify the prescriptions, as needed, and respond to comments. Modified prescriptions are reviewed and signed at a level at least as high as the Regional Administrator. Within 60 days of the close of the draft NEPA comment period, NMFS will submit modified prescriptions, unless substantial or new information is provided during the NEPA comment period requiring additional review time. In those infrequent situations when additional time is needed, NMFS will submit to FERC, and serve upon the Service List and all commenters, a letter providing an explanation of the need for additional time and a schedule for preparing the modified prescriptions.

(2) NMFS will coordinate with other resource agencies and tribes, as appropriate, when reviewing and responding to comments. The format of the response to comments may vary depending on the nature, substance and extent of the comments received, inter-agency involvement, time frame, and NMFS' practice. Submission of the modified prescriptions will be signed by an authorized person at least as high as the Regional Administrator level.

(3) NMFS will submit to FERC modified prescriptions, a response to comments, and an index of NMFS' administrative record. In its submission, NMFS will identify the schedule for filing its administrative record. NMFS will file its administrative records with FERC. A copy of the administrative record will be provided to the applicant. Any party on the Service List may request copies of the administrative record, in whole or in part. Finally, NMFS intends to furnish modified prescriptions to FERC in advance of issuance of the final NEPA document.

(c) *Reconsideration of modified prescriptions - requests for rehearing.* After FERC issues the license, if any intervener submits a request for rehearing that clearly identifies substantial issues with NMFS' modified prescriptions and includes supporting evidence, NMFS will review those concerns. For substantive issues raised regarding NMFS' prescriptions, NMFS will submit a written response to the commenter, and file a copy with FERC, within 30 days if possible. In those cases when FERC authorizes parties an opportunity to file briefs or present oral argument on the issues presented on rehearing, NMFS will submit its written response in the form of a brief, filed with FERC pursuant to 18 CFR 385.713(d)(2), In those unusual situations when more than 30 days is required for response because of significant or new information, NMFS will, within 30 days, submit its reason for needing this time and a reasonable schedule for the written response. NMFS may choose to file consolidated responses to more than one request for rehearing.

§ 221.4 Prescriptions submitted with an offer of settlement, whether in an Alternative Licensing Process (ALP) or otherwise.

This § 221.4 describes an opportunity for NMFS to receive and respond to comments regarding the mandatory prescriptions submitted to FERC pursuant to a negotiated offer of settlement, including settlements reached under FERC's ALP. The form of the review process will depend on whether NMFS submits prescriptions that are intended to implement corresponding terms of a settlement agreement entered into by NMFS pursuant to its statutory authority. If NMFS submits prescriptions that are not part of a settlement agreement, then the procedure described in § 221.3 applies.

(a) Under the ALP the applicant files a license application, including an offer of settlement, which may include NMFS' agreement as to its prescriptions, and a draft applicant prepared NEPA document with FERC. Alternatively, NMFS may join as a party to a settlement agreement reached through negotiations under the TLP or ILP. If, pursuant to a settlement agreement reached with the licensee and other parties, NMFS agrees to the terms of settlement pertaining to its exercise of authority under section 18 of the FPA, then the following modified review process applies:

(1) Under the ALP, or in response to the submission of any offer of settlement reached under the TLP or ILP, FERC will publish a notice calling for comments on the license application and the offer of settlement, including the terms of settlement pertaining to NMFS' agreed upon section 18 of the

FPA prescriptions. In response to FERC's notice, interested parties are provided an opportunity to comment on the license application, the settlement offer, and NMFS' agreed upon prescriptions.

(2) If comments and supporting evidence directly addressing NMFS' agreed upon fishway prescriptions are submitted, then NMFS will review the comments. If comments are substantive and raise issues not previously identified and possibly require changes to the prescriptions and/or settlement agreement, NMFS will discuss the comments and its appropriate resolution with participants, based on the parties' communications protocol.

(3) If NMFS determines, after discussion with the other settlement participants, that the comments warrant a change in the agreed-upon prescriptions, NMFS will modify the agreed-upon prescriptions. NMFS will modify the agree-upon prescriptions that are made as a result of comments received and discussions with the settlement participants. If submitted under the ALP, this comment opportunity provided pursuant to the offer of settlement will be the only review conducted by NMFS' on its agreed-upon prescriptions, prior to FERC's license decision.

(b) Under the ALP and other licensing processes, FERC also publishes a notice indicating that it is ready to proceed with the environmental review. In response to this Notice, NMFS, pursuant to its statutory authority under section 18 of the FPA, will submit to FERC, as a separate filing, its agreed-upon prescriptions, so that regardless of FERC action on the settlement agreement, NMFS' agreed-upon prescriptions will become mandatory license conditions. Any changes that may have been made to the settlement prescriptions as a result of comments received will be included in this submission.

[FR Doc. 04–20469 Filed 9–8–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[I.D. 090204F]

Endangered and Threatened Species: Notice of Public Hearings on Proposed Listing Determinations for Salmonids in California

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

ACTION: Notice of public hearings.

SUMMARY: In June 2004, NMFS proposed new listing determinations for 27 Evolutionarily Significant Units (ESUs) of salmon and *O. mykiss* as threatened and endangered under the ESA, including 10 ESUs in California. NMFS recently extended the public comment period for these proposals to October 20, 2004, and also announced a series of eight public meetings/hearings that will be held in the Pacific Northwest. In this notice, NMFS is announcing that public hearings will also be held at six locations in California from late September through mid-October to provide additional opportunities for the public and other interested parties to comment on the subject proposals.

DATES: Written comments must be received by October 20, 2004. See **SUPPLEMENTARY INFORMATION** for the specific public hearing dates.

ADDRESSES: You may submit comments on the proposed listing determinations for 27 ESUs of West Coast Salmon and *O. mykiss* (69 FR 33101; June 14, 2004) by any of the following methods:

E-mail: The mailbox address for submitting e-mail comments on the new listing determination proposals is *salmon.nwr@noaa.gov*. Please include in the subject line of the e-mail comment the document identifier ''Proposed Listing Determinations.''

Mail: Submit written comments and information to Assistant Regional Administrator, NMFS, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, California, 90802–4213. Please identify the comment as regarding the ''Proposed Listing Determinations.''

Fax: 562–980–4027. Please identify whether the fax comment as regarding the ''Proposed Listing Determinations.''

Copies of the **Federal Register** notices cited herein and additional salmon-related materials are available on the Internet at *http://www.nwr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Craig Wingert, NMFS, Southwest Region, (562) 980–4021.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 2004, NMFS published proposed new ESA listing determinations for 27 salmon and *O. mykiss* ESUs, including ten ESUs that occur in California (69 FR 33101). The 27 proposed listing determinations include 162 total hatchery programs, as part of four ESUs being proposed for endangered status and 23 ESUs being proposed for threatened status. In addition, NMFS proposed amendments to the existing 4(d) protective regulations for the proposed threatened ESUs.

Extension of Public Comment Period

Several requests were received to extend the comment period for the proposed listing determinations for the 27 ESUs. The original comment period for the proposed listing determinations was to end on September 13, 2004, but has recently been extended to October 20, 2004 (69 FR 53031), to allow additional opportunity for public comment (see **DATES** and **ADDRESSES**).

Public Hearings

Joint Commerce-Interior ESA implementing regulations state that the Secretary shall promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed regulation to list a species or to designate critical habitat (see 50 CFR 424.16(c)(3)). In order to provide the public additional opportunity provide comments on these new listing determination proposals, NMFS will be holding six public hearings in California at the specific dates and locations listed below:

(1) September 22, 2004; 6:30–9:30pm at the North Coast Inn, 4975 Valley West Blvd., Arcata, CA 95521 (2) September 23, 2004; 6:30–9:30pm at the DoubleTree Hotel Sonoma Wine Country, One DoubleTree Drive, Rohnert Park, CA 94928

(3) September 28, 2004; 6:30–9:30pm at the Best Western Hilltop Inn, 2300 Hilltop Drive, Redding, CA 96002

(4) September 28, 2004; 6:30–9:30pm at the Monterey Beach Resort, 2600 Sand Dunes Drive, Monterey, CA 93940

(5) October 12, 2004; 6:30–9:30pm at the Radisson Hotel Sacramento, 500 Leisure Lane, Sacramento, CA 95815

(6) October, 12, 2004; 6:30–9:30pm at Fess Parker's DoubleTree Resort, 633 East Cabrillo Blvd., Santa Barbara, CA 93103

NMFS has scheduled these hearings to allow affected stakeholders and members of the public the opportunity to provide comments directly to agency staff during the comment period. However, these public meetings are not the only opportunity for the public to provide input on these proposals. The public and stakeholders are encouraged to continue to comment and provide input to NMFS on the proposals (via correspondence, e-mail, and the Internet; see **ADDRESSES**, above) up until the scheduled close of the comment period on October 20, 2004.

References

Copies of the **Federal Register** notices and related materials cited herein are available on the Internet at *http://nwr.noaa.gov*, or upon request (see **ADDRESSES** section above).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: September 3, 2004.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–20425 Filed 9–3–04; 2:49 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 69, No. 174

Thursday, September 9, 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

Submission for OMB Review; Comment Request

September 2, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_ OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

Agricultural Marketing Service

Title: Customer Service Survey for USDA—Donated Food Products.

OMB Control Number: 0581–0182.

Summary of Collection: To support the Agricultural Marketing Service (AMS) activities under the authority of 7 CFR 250, regulations for the Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction, AMS will use a customer driven approach to maintain and improve the quality of food products and packaging. AMS will use AMS–11, ''Customer Opinion Postcard,'' to collect information. Customers that use USDA procured commodities to prepare and serve meals retrieve these cards from the boxes and use them to rate their perception of product flavor, texture, and appearance as well as overall satisfaction.

Need and Use of the Information: AMS will collect information on the product type, production lot, and identify the location and type of facility in which the product was served. Without this information, AMS will not be able to obtain timely and accurate information about its products from customers that use them.

Description of Respondents: State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 8,400.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 700.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–20379 Filed 9–8–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 2, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_ OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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Farm Service Agency

Title: Total Quality Systems Audit.

OMB Control Number: 0560–0214.

Summary of Collection: The Total Quality System Audit (TQSA) is a fee for service audit based quality verification program for food processors and other food related manufacturers and non-manufacturers. The TQSA team coordinates the audit with the supplier's management. The team makes detailed assessments of the company's production facilities, equipment, and procedures. The statutory requirements for this information collection can be found at 21 CFR Parts 110 Current Good Manufacturing Practices and Federal Acquisition Regulation subparts 9.1 Responsible Prospective Contractors and 46.4 Government Contract Quality Assurance.

Need and Use of the Information: The Farm Service Agency (FSA) will collect information using forms KC–1TQ, Total Quality Systems Audit-Audit Summary, KC–3TQ, Total Quality Systems Audit-Corrective Action Request (CAR) and KC–3TQer, Total Quality Systems Audit ''Corrective Action Request (CAR) Electronic Response. FSA will collect records pertaining to organization, production or service, work procedures, quality testing, shipping, sub-supplier, certifications, delivery, proof of domestic origin, and all FSA contract documents. The information will be used to determine the eligibility for and awarding of contracts.

Description of Respondents: Business or other-for-profit; Not-for-profit institutions; State, Local and Tribal Government.

Number of Respondents: 200.

Frequency of Responses: Recordkeeping; Reporting: Quarterly; Semi-annually; Annually.

Total Burden Hours: 96,200.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–20380 Filed 9–8–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 2, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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Risk Management Agency

Title: Prescribed Fire Liability Insurance Survey.

OMB Control Number: 0563–NEW.

Summary of Collection: The Agriculture risk Protection Act (ARPA) of 2000 requires the Risk Management Agency (RMA) to increase the availability of risk management tools to provide assistance to State Foresters or equivalent officials for the prescribed use of burning on private forestland for the prevention, control and suppression of fire. RMA will conduct a one-time survey to determine if an affordable liability policy can be developed that would increase the adoption of prescribed fire on private forestland.

Need and Use of the Information: RMA will collect information for developing a risk management tool for prescribed use of fire. The survey will identify the risks of escaped fire and smoke from the prescribed fire. The information will be used to develop rating simulation models for private insurance policies. Florida, Oregon, Texas and the Midwest states including Wisconsin, Minnesota, Iowa, Oklahoma, and Missouri will participate.

Description of Respondents: Business or other for-profit; farms; Federal Government.

Number of Respondents: 357.

Frequency of Responses: Reporting: Biennially; other (one-time).

Total Burden Hours: 286.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–20381 Filed 9–8–04; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 2, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

Forest Service

Title: Health Screening Questionnaire.

OMB Control Number: 0596–0164.

Summary of Collection: The Protection Act of 1922 (16 U.S.C. 594) authorizes the Forest Service (FS) to fight fires on National Forest System lands. Potential applicants or recertification of firefighters seeking employment are to complete forms FS–5100–30, Work Capacity Test and FS–5100–31, Health Screening Questionnaire, which are necessary to

obtain their health screening information.

Need and Use of the Information: FS will collect information to determine whether an individual being considered for a position in Wildland Firefighting can carry out those duties in a manner that will not place the candidate unduly at risk due to inadequate physical fitness and health.

Description of Respondents: Individuals or households; Federal Government.

Number of Respondents: 15,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,250.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–20382 Filed 9–8–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 2, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_ OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

Food and Nutrition Service

Title: Food Stamp Program Application.

OMB Control Number: 0584–0008.

Summary of Collection: Section 9(a) of the Food Stamp Act of 1977 as amended, (7 U.S.C. 2011 *et seq.*) requires retail food stores and meal services (firms) to submit applications to the Food and Nutrition Service (FNS) for approval prior to participating in the Food Stamp Program. FNS will review the information from forms FNS–252, Food Stamp Program Application for Store, FNS 252–2, Meal Service Application, and FNS–252–C, Corporate Supplemental Application to determine if the applicants meet the eligibility requirements to redeem Food Stamp benefits.

Need and Use of the Information: FNS will use the information during compliance and investigations to determine whether or not retail, wholesale or food service organization continue to meet the requirements and for sanctioning those stores found to be in violation of the program. Owners Employer Identification Numbers (EIN) and Social Security Numbers (SSN) may be disclosed to and used by Federal agencies or instrumentalities that otherwise gave access to EINs and SSNs.

Description of Respondents: Business or other for-profit; not-for-profit institutions; Farms; Federal Government.

Number of Respondents: 48,171.

Frequency of Responses: Third party disclosure; reporting: On occasion.

Total Burden Hours: 4,653.

Sondra Blakey,

Department Information Collection Clearance Officer.

[FR Doc. 04–20383 Filed 9–8–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 2, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_ OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

Rural Housing Service

Title: Rural Housing Demonstration Program—Section 502.

OMB Control Number: 0575–0114.

Summary of Collection: Section 506 of the Housing Act of 1949 as amended by title V-Rural Housing of Housing and Urban-Rural Recovery Act of 1983 directs the Secretary to conduct research, technical studies and demonstrations in order to improve the architectural designs, cost effectiveness and utility of housing units. The amendment allows the Secretary to permit housing demonstrations which do not meet existing published standards, rules, regulations or policies, if the Secretary finds that in doing so, the health and safety of the population is not adversely affected.

Need and Use of the Information: RHS will use the collected information

from the applicants to evaluate the strengths and weaknesses of the proposals to select the most feasible proposals that will enhance the Agency's chances in accomplishing the objective. The information will be utilized to sustain and modify RHS' current policies pertaining to the construction of modest housing.

Description of Respondents: Business or other for-profit; not-for-profit institutions; individuals or households; State, local or tribal government.

Number of Respondents: 25.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 2,000.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–20384 Filed 9–8–04; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License; Correction

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Intent To Grant Exclusive License; correction.

SUMMARY: The Agricultural Research Service published in the **Federal Register** of August 11, 2004, a Notice of Federal Invention Available for Licensing and Intent to Grant Exclusive License to Nutrition 21, Inc., of Purchase, New York, to U.S. Patent 6,689,383, ''Chromium-Histidine Complexes as Nutrient Supplements.'' The notice was inadvertently published as a Notice of Availability and referenced the incorrect issue date for U.S. Patent 6,689,383, ''Chromium-Histidine Complexes as Nutrient Supplements.'' The corrected Action is Notice of Intent to Grant Exclusive License, and the correct issue date for U.S. 6,689,383, ''Chromium-Histidine Complexes as Nutrient Supplements'' is February 10, 2004.

DATES: October 12, 2004.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: (301) 504–5989.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 04–20351 Filed 9–8–04; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 04–013N]

Humane Handling and Slaughter Requirements and the Merits of a Systematic Approach To Meet Such Requirements

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: All livestock establishments are required to meet requirements in the Humane Methods of Slaughter Act (HMSA), Federal Meat Inspection Act (FMIA) and implementing regulations. FSIS believes a systematic approach is beneficial in meeting these requirements and through this notice is encouraging livestock slaughter establishments to use a systematic approach to humane handling and slaughter to best ensure that they meet the requirements of the HMSA, FMIA, and implementing regulations. With a systematic approach, establishments focus on treating livestock in such a manner as to minimize excitement, discomfort, and accidental injury the entire time they hold livestock in connection with slaughter.

FOR FURTHER INFORMATION CONTACT: Lynn Dickey, Ph.D., Director, Regulations and Petitions Policy Staff, Office of Policy, Program and Employee Development, Food Safety and Inspection Service, Cotton Annex Building, 300 12th Street, SW., Room 112, Washington, DC 20250–3700; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

The HMSA, the FMIA, and FSIS Regulations on Humane Handling and Slaughter of Livestock

The HMSA of 1978 (7 U.S.C. 1901 *et seq.*) requires that humane methods be used for handling and slaughtering livestock. The HMSA provides that two methods of slaughter and handling are humane. Under the first humane method, all livestock are rendered insensible to pain by a single blow or gunshot or an electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut. Under the second humane method, slaughtering is in accordance with the ritual requirements of the Jewish faith or of any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

In the HMSA, Congress found ''that the use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry; brings about improvement of products and economies in slaughtering operations; and produces other benefits for producers, processors, and consumers which tend to expedite an orderly flow of livestock and livestock products in interstate and foreign commerce.''

The HMSA is referenced in the FMIA (21 U.S.C. 603) and is implemented by FSIS humane handling and slaughter regulations found at 9 CFR part 313. The FMIA provides that, for the purposes of preventing inhumane slaughter of livestock, the Secretary of Agriculture will assign inspectors to examine and inspect the methods by which livestock are slaughtered and handled in connection with slaughter in slaughtering establishments subject to inspection (21 U.S.C. 603(b)). Therefore, establishments must meet the humane handling and slaughter requirements in the regulations the entire time they hold livestock in connection with slaughter.

The Reason FSIS is Issuing This Notice at This Time

FSIS is issuing this notice because there has been considerable congressional and public interest about the humane treatment of animals, and because the number of humane handling noncompliance incidents documented by FSIS in establishments has increased over the last three years.

In recent years, Congress has taken various actions to strengthen USDA's resources and to ensure that the agency enforces the humane handling and slaughter provisions of the HMSA and the FMIA. In 2001, Congress provided funds for the agency to enhance verification and enforcement of humane slaughter practices. In response, FSIS created the position of District Veterinary Medical Specialist (DVMS) in each of the FSIS district offices. The DVMSs are the primary contacts for all humane handling and slaughter issues, and they are the liaisons between the district offices and headquarters. They are responsible for on-site coordination of nationally prescribed humane slaughter procedures and verification of

humane handling activities, as well as for disseminating directives, notices, and other information related to the HMSA.

In a recent congressional conference report for fiscal year 2003 appropriations (House Conference Report. No. 108–10 (2003)), the conferees directed the United States Government Accountability Office (GAO) to review and report to the appropriations committees on the scope and frequency of humane slaughter violations and to provide recommendations on the extent to which additional resources for inspection personnel, training, and other agency functions are needed to properly regulate slaughter facilities.

In response to this congressional request, GAO analyzed the scope and frequency of humane handling and slaughter noncompliance incidents documented by FSIS inspection program personnel and found that the number of documented records for noncompliance incidents increased from January 2001 through March 2003. Similarly, the number of noncompliance records documenting relatively minor violations increased as well. FSIS attributed the increase in part to the enhanced awareness of humane handling and noncompliance documentation requirements on the part of the FSIS inspection program personnel (based in part on the efforts of the DVMSs).

In addition to this congressional interest, FSIS has received over 20,000 letters from the public (individuals, consumer organizations, and animal welfare organizations) over the last few years expressing concerns regarding the humane treatment of livestock. Public interest regarding the humane treatment of livestock continues to be high.

FSIS has sought to demonstrate its commitment to humane handling and slaughter by taking a number of actions in addition to creating the position of DVMS. The Agency issued FSIS Notice 50–02, ISP Procedure Code for Humane Slaughter in November 2002. This Notice directs FSIS veterinarians and FSIS inspection program personnel to document violations of humane handling requirements on a Noncompliance Record (NR) using a procedure code that was created solely to document violations of humane handling and slaughter requirements. Use of this code is allowing the Agency to more accurately document, track, and address violations of the HMSA.

In November of 2003, the Agency issued a directive to all FSIS inspection program personnel that provides specific, detailed information about requirements of the HMSA to ensure that verification and enforcement are clearly and uniformly understood. In June 2004, FSIS issued a FSIS Notice to provide FSIS inspection program personnel with clarification regarding what information they are to record in Humane-handling Activities Tracking (HAT) under the Electronic Animal Disposition Report System (eADRS), and to remind them about the information that they are to include on NRs issued for humane handling noncompliances.

A Systematic Approach to Humane Handling and Slaughter

Establishments need to implement and maintain a systematic approach to humane handling and slaughter to best assure compliance with the HMSA, FMIA and implementing regulations. To develop and maintain a systematic approach to meet the humane handling and slaughter requirements, establishments should:

(1) Conduct an initial assessment of where and under what circumstances livestock may experience excitement, discomfort, or accidental injury while being handled in connection with slaughter and, except for establishments conducting ritual slaughter, where and under what circumstances stunning problems may occur;

(2) Design facilities and implement practices that will minimize excitement, discomfort, and accidental injury to livestock;

(3) Evaluate periodically their handling methods to ensure they minimize excitement, discomfort, or accidental injury and, except for establishments conducting ritual slaughter, evaluate periodically their stunning methods to ensure that all livestock are rendered insensible to pain by a single blow; and

(4) Improve handling practices and modify facilities when necessary to minimize excitement, discomfort, and accidental injury to livestock.

In the first step of a systematic approach, establishments should conduct an assessment of where handling and stunning problems may occur. Establishments should consider such factors as (1) whether the movement of livestock is done with a minimum of excitement and discomfort to the animal and at a suitable pace, (2) whether the particular livestock's genetics, instincts, and behavior are taken into account in the handling of livestock in the establishment, (3) whether electric prods and other implements are used as little as possible to move animals within the establishment, (4) whether animals have access to water, (5) whether there is sufficient room in the holding pens for animals that are held overnight, (6) whether training is provided for establishment personnel in the appropriate and proper use of restraints and prods, and (7) whether potential weather and climatic conditions of the locale, especially for disabled livestock in the establishment, will lead to the inhumane treatment of animals.

Establishments should also assess the stunning method used for its effectiveness in rendering animals immediately unconscious and to ensure that animals are being properly stunned before being slaughtered. Establishments should also assess the training for establishment personnel in the appropriate use of stunning and slaughtering equipment.

In the second step of a systematic approach, establishments should determine if they are in compliance with the regulatory requirements by analyzing whether (1) the pens, driveways, and ramps are designed and maintained to prevent injury or pain to the animals,(2) the pens are free of loose boards or openings, so that the head, feet or legs of an animal will not be injured, (3) the floors of pens, ramps, and driveways are constructed so that an animal is not likely to fall (*e.g.*, using cleated or waffled floors or sand on the floors), and (4) driveways are designed so that sharp turns or sudden reversals of direction are minimized, so that they are not likely to cause injury to the animals.

In the third step of a systematic approach, establishments should evaluate periodically their handling methods to ensure that their employees are in fact minimizing excitement, discomfort, or accidental injury to livestock. Establishments should also periodically evaluate their stunning methods to ensure that they are working effectively to render all animals insensible to pain by a single blow.

If an establishment finds evidence of a problem during the first three steps of the evaluation process, it should follow step 4 of the systematic approach and improve its handling practices or modify its facilities to minimize the excitement, discomfort, or accidental injury to livestock.

(Some of the factors recommended above are based on information from Dr. Temple Grandin—*see* the references at the end of this Notice).

When conducting the four recommended steps outlined above, establishments should consider all factors relevant to humane handling and slaughter requirements for the entire

time that livestock is held in connection with slaughter.

Through a systematic approach, establishments that do not conduct ritual slaughter will best ensure that their stunning methods render all livestock insensible to pain by a single blow. In addition, FSIS is recommending the systematic approach discussed above because it ensures that establishments take into account any new conditions in the establishment that warrant changes to facilities or existing handling or slaughter procedures.

FSIS has included a list of references that may assist establishments in considering means of assessing or improving their handling and slaughter procedures.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS web page located at *http://www.fsis.usda.gov.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS web page. Through Listserv and the web page, FSIS is able to provide information to a much broader, more diverse audience.

References

The following sources are available for review in the FSIS Docket Room, Cotton Annex, 300 12th Street, SW., Room 102, Washington, DC 20250 between 8:30 a.m. and 4 p.m., Monday through Friday.

Baker, L. (2004). *Humane slaughter systems.* Unpublished research paper, Virginia-Maryland Regional College of Veterinary Medicine, Blacksburg, Virginia.

D'Souza, D.N., Warner, R.D., Dunshea, F.R. & Leury, B.J. (1998). Effect of on-farm and pre-slaughter handling of pigs on meat quality. *Australian Journal of Agricultural Research, 49, 1021–1025.*

Grandin, T. (2003). *AMI Meat Institute Foundation: Good management practices for animal handling and stunning* at *http://www.grandin.com/ami.audit.guidelines.html.*

Grandin, T. (1996). *Animal welfare in slaughter plants.* Research paper presented at the 29th Annual Conference of American Association of Bovine Practitioners. Proceedings, pages 22–26.

Grandin, Temple Web Page. Available at: *http://www.grandin.com.*

Done at Washington, DC on September 3, 2004.

Barbara J. Masters,

Acting Administrator.

[FR Doc. 04–20431 Filed 9–8–04; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Centennial Salvage Timber Sale; Caribou-Targhee National Forest, Fremont and Clark Counties, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Supervisor of the Caribou-Targhee National Forest gives notice of the agency's intent to prepare an environmental impact statement for the Centennial Salvage Timber Sale. The project area is located in the Centennial Mountains twenty-eight miles north of Ashton, Idaho. Information gathered from forest health specialist assessments, field and remote sensing reconnaissance, and the 1997 Targhee National Forest Revised Forest Plan, identified several concerns within the Douglas-fir, aspen, and whitebark pine forest community types within the Centennial Salvage Timber Sale project area. These concerns include: A large amount of forest stands moderately to highly susceptible to the Douglas-fir beetle and western spruce budworm; large areas of tree mortality due to the Douglas-fir beetle; and the decline of aspen and whitebark pine forest communities. The Ashton/Island Park Ranger District proposes to use intermediate commercial treatments on approximately 5,210 acres on forest stands that are moderately to highly susceptible to Douglas-fir beetle and western spruce budworm and prescribed fire on 718 acres of high elevation forest where whitebar pine is present. Intermediate commercial treatments include the following silvicultural methods: Commercial thinning, sanitation, salvage, and improvement cutting treatments. Commercial thinning, sanitation, salvage, and improvement cuttings would be used separately or in combination with each other, to reduce the risk and susceptibility to Douglas-fir beetle and western spruce budworm, recover economic value of dead and dying trees, and maintain and enhance aspen. Yarding systems for commercial harvest would use ground based logging equipment (tractors, rubber tired skidders, etc.). Prescribed fire would be used to remove encroaching shade tolerant conifers and stimulate natural regeneration of whitebark pine and aspen. Approximately 19.7 miles of existing Forest Service system roads and 38 miles of temporary roads would be used for timber harvest activities. The majority of temporary roads would be constructed using existing forest nonsystem road prisms. All temporary roads would be obliterated after timber harvest use. All timber harvest related activities would occur from December 15th to April 1st to remove overwintering Douglas-fir beetle and minimize disturbance to grizzly bears.

DATES: Comments concerning the scope of the analysis must be received by September 30, 2004. The draft environmental impact statement is expected February 2005 and the final environmental impact statement is expected June 2005.

ADDRESSES: Send written comments to Centennial Salvage Timber Sale, c/o Tom Silvey, Ashton/Island Park Ranger District, P.O. Box 858, Ashton, Idaho 83420. Comments can also be electronically mailed (in Microsoft Word or .rtf format) to: *comment-intermtn-caribou-targhee-ashton-islandpark@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Tom Silvey, Interdisciplinary Team Leader, Ashton/Island Park Ranger District, P.O. Box 858, Ashton, Idaho 83420. Telephone: (208) 652–7442.

SUPPLEMENTARY INFORMATION: Using information gathered from forest health specialists assessments, field and remote sensing reconnaissciance, and the Revised Forest Plan for the Targheee National Forest, Forest Service personnel found several concerns with the Douglas-fir, aspen, and whitebark pine forest community types. These included:

• Approximately 42% (12,659 acres) of the forested acres in the project area are moderately to highly susceptible to the Douglas-fir beetle. Currently, within and around the project area, there is a Douglas-fir beetle and western spruce budworm epidemic. An examination of aerial flight and high resolution satellite imagery taken in 2003, identified approximately 2,200 acres of high mortality in the large mature Douglas-fir due to the Douglas-fir beetle. There is a high risk of losing substantial amounts

of mature Douglas-fir stand and degrade them beyond the point of resiliency and sustainability within the project area.

• Aspen within the project area is declining due to the encroachment of conifers and lack of disturbances such as fire. This change reduces both plant and animal diversity.

• Whitebark pine is in decline within the project area. It has been identified as a community type at risk due to the devastating effects of white pine blister rust, mountain pine beetle, and competition from shade tolerant species such as subalpine fir and Engelmann spruce. The seeds of the whitebark pine are an important food source for the grizzly bear which is a primary concern within the project area.

The Targhee Revised Forest Plan management prescriptions for the Centennial Salvage Timber Sale are: Management prescription 5.3.5 Grizzly Bear Habitat, which emphasizes a high degree of security and resource conditions which contribute toward the recovery of the grizzly bear, and benefits to other wildlife; Management prescription 3.1.2 Nonmotorized; and Management prescription 3.2(g) Semi-Primitive Motorized.

Purpose and Need for Action

The purpose of the Centennial Salvage Timber Sale is to: Reduce the susceptibility and risk of forested vegetation to insects and disease, maintain and enhance aspen and whitebark pine forest communities, capture economic value from dead and dying trees, and provide a sustained yield of forest products from commercial forest lands.

Proposed Action

The Ashton/Island Park Ranger District, Caribou-Targhee National Forest proposes to treat forested vegetation using timber harvest and prescribed fire to meet the purpose and need of the project. The proposed action includes:

• Use intermediate commercial treatments on approximately 5,210 acres on forest stands that are primarily moderately to highly susceptible to the Douglas-fir beetle and western spruce budworm. Intermediate commercial treatments include the following silvicultural methods: commercial thinning, sanitation, salvage, and improvement cutting treatments. Majority of all commercial timber harvest activities would occur from December 15th to April 1st facilitate the removal of over-wintering Douglas-fir beetle and minimize disturbance to grizzly bear. Timber harvest would be accomplished by using ground based logging equipment (tractors, rubber tired skidders, low ground pressure equipment, etc.). No timber harvest activities are proposed in management prescriptions 3.1.2 and 3.2.(g) and Inventoried Roadless Areas.

• Use prescribed fire on approximately 718 acres to remove encroaching shade tolerant conifers and stimulate natural regeneration of whitebark pine and aspen. Majority of prescribed fire would take place in management prescriptions 3.1.2 and 3.2(g) with a minor amount of area in management prescription 5.3.5.

• Approximately 19.7 miles of existing Forest Service system roads and 38 miles of temporary roads would be used for timber harvest activities. The majority of temporary roads would be constructed using existing forest nonsystem road prisms. Timber harvest activity road use would occur from December 15th to April 1st. All temporary roads would be effectively closed to all motorized use from April 2nd to December 14th. To effectively close roads, earthen berms, woody debris, and rocks would be used. All temporary roads would be obliterated after timber harvest use. Obliteration activities would include using earthen berms, ripping and seeding, and waterbars. Obliteration activities would occur during summer and fall seasons. All temporary road construction and system road use for timber harvest activities would occur in management prescription 5.3.5. No net increase in motorized travel miles is proposed. No temporary roads are proposed in Inventories Roadless Areas.

Responsible Official

The responsible official is Jerry B. Reese, Forest Supervisor, Caribou-Targhee National Forest, 1405 Hollipark Dr., Idaho Falls, Idaho 83401.

Nature of Decision To Be Made

The criteria for the decision to be made will be framed around the degree to which alternative selected best addresses the purpose and need. The decision will address: How to treat this proposed project area including: The location, project design, scheduling of the proposed activities, vegetation treatments, road use, and mitigation measures and monitoring requirements.

Scoping Process

Initial public involvement will include mailing a project description and maps to interested parties to solicit comments on the proposal. No scoping meetings are planned at this time.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The Forest Service is seeking information and comments from Federal, State, and local agencies, as well as individuals and organizations that may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed.

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 mertis 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 comments, 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 31, 2004.

Jerry B. Reese,

Forest Supervisor.

[FR Doc. 04–20367 Filed 9–8–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Notice of Request for New Information Collection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces our intention to request approval from the Office of Management and Budget for two new information collection activities to support a large livestock and meat marketing study. There will be two types of information collection activities. First, transactions data on procurement and sales will be collected from meat packers, meat processors, food wholesalers, food retailers, food service operations, and meat exporters. Second, a survey will be conducted regarding the use of alternative marketing arrangements for cattle, hog, and lamb and their meat products among producers, feeders, dealers, meat packers, meat processors, food wholesalers, food retailers, food service operations, and meat exporters.

DATES: We will consider comments that we receive by November 8, 2004.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- *E–Mail:* Send comments via electronic mail to *comments.gipsa@usda.gov.*
- *Mail:* Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- *Fax:* Send comments by facsimile transmission to: (202) 690–2755.
- *Hand Delivery or Courier:* Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.

Instructions: All comments should make reference to the date and page number of this issue of the **Federal Register**.

Background Documents: Information collection package and other documents relating to this action will be available for public inspection in the above office during regular business hours.

Read Comments: All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Roger Schneider, Economist, USDA, GIPSA, (202) 720–4660, 1400 Independence Avenue, SW., Room 1642–S, Washington, DC 20250–3647, or via e-mail at *Roger.E.Schneider@usda.gov.*

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) of the U.S. Department of Agriculture (USDA) administers the Packers and Stockyards Act of 1921, as amended and supplemented (7 U.S.C. 181–229) (P&S Act). The P&S Act prohibits unfair, deceptive, and fraudulent practices by market agencies, dealers, stockyards, packers, swine contractors, and live poultry dealers in the livestock, meatpacking, and poultry industries. In fiscal year 2003, GIPSA received $4.5 million in appropriations for a packer concentration study, which will be a broad study of marketing practices in the entire livestock and red meat industries (Pub. L. 108–7, 117 Stat. 22). The study will address many questions and concerns that have been raised about changes in the structure and business practices in the livestock and meat industries. We published a notice announcing the study and describing the approach that we planned for the study on May 30, 2003 (68 FR 32455–32458).[1]

More specifically, the study will: (1) Identify and classify spot and alternative marketing arrangements; (2) describe terms, availabilty, and reasons for use of spot and alternative marketing arrangements and associated prices; (3) determine extent of use, analyze price differences, and analyze short-run spot market price effects of alternative marketing arrangements; (4) measure and compare costs and benefits associated with spot and alternative marketing arrangements; and (5) analyze the implications of alternative marketing arrangements for the livestock and meat marketing system.

This notice announces and requests comments on two information collection packages that we are preparing to request approval from the Office of Management and Budget to collect information for the study. The first information collection package will cover transactions data on procurement and sales from meat packers, feeders, dealers, meat processors, food wholesalers, food retailers, food service operations, and meat exporters. The second information collection package will cover surveys about the use of alternative marketing arrangements among cattle, hog, and lamb producers, meat packers, meat processors, food wholesalers, food retailers, food service operations, and meat exporters.

Title: Livestock and Meat Marketing Study; Transactions Data and Survey of Alternative Marketing Arrangements.

OMB Number: New Collection.

Expiration Date of Approval: New Collection.

Type of Request: New.

Abstract: To conduct this study it is necessary to collect data on procurement and sales transactions from a sample of meat packers, meat processors, food wholesalers, food retailers, food service operations, and meat exporters. The establishments selected for the sample will be asked to provide the requested data in an electronic format, to the greatest extent practicable.

Response to this data collection which constitutes a special report, will be required for meat packers and meat processors (7 U.S.C. 222).[2] The establishments will be asked to provide daily transactions data for procurement and sales for a 2-year period. Additionally, meat packers will be asked to provide summaries of operations data (profit and loss statements).

Response to this data collection will be voluntary for food wholesalers food retailers, food service operations, and meat exporters. The establishments will be asked to provide transactions data for procurement and sales for a 2-year period in an aggregated format to reduce the burden.

[1] Additional information about the study, including comments to the notice and the announcement of the contract to perform the study, is available on the GIPSA web site (*http://www.usda.gov/gipsa/psp/issues/livemarketstudy/livestock_marketing_study.htm*).

[2] The recordkeeping requirements for the data covered by this information collection activity have been previously approved separately under OMB control number 0580–0015.

In addition, to complete this study it is necessary to conduct surveys of cattle, hog, and lamb producers, feeders, dealers, meat packers, meat processors, food wholesalers, food retailers, food service operations, and meat exporters. Participation in the surveys will be voluntary. Surveys will be mailed, with initial and follow-up contacts by telephone. The surveys will collect information on terms and frequency of use of alternative marketing arrangements; volume of livestock and meat transferred with alternative marketing arrangements, pricing methods for livestock and meat; reasons for using alternative marketing arrangements; and the effects of alternative marketing arrangements on costs and efficiencies, product quality, and risk shifting. The survey question will be targeted to the appropriate industry segment to reduce burden.

All data collection requests will include a pledge of confidentiality and the data will be collected exclusively for statistical purposes consistent with the provisions of the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA). In addition, the transactions data collected from meat packers and processors (part 1) will be subject to the confidentiality restrictions in the P&S Act.

(1) Transaction Data

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 40 hours per response.

Respondents (Affected Public): Meat packers, meat processors, food wholesalers, food retailers, food service operations, and meat exporters.

Estimated Number of Respondents: 400.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 16,000 hours.

Total Costs: Transactions data reporting $435,072 for all establishments combined. Calculated as follows: (16,000 hours) × ($27.192 per hours) = $435,072.

(2) Alternative Marketing Arrangements Survey

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 60 minutes per response.

Respondents (Affected Public): Cattle, hog, and lamb producers, feeders, dealers, meat packers, meat processors, food wholesalers, food retailers, food service operations, and meat exporters.

Estimated Number of Respondents: 3,800.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3,800 hours.

Total Costs: Survey reporting $139,080 for all establishments combined. Calculated as follows: (3,800 hours) × ($36.60 per hour) = $139.080.

Copies of this information collection assessment can be obtained from Tess Butler; see **ADDRESSES** section for contact information.

As required by the Paperwork Reduction Act (44 U.S.C. 3506(c)(2)(A)) and its implementing regulations (5 CFR 1320.8(d)(1)(i)), we specifically request comments on:

(a) 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;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden on 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.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Authority: 44 U.S.C. 3506, 5 CFR 1320.8, and Pub. L. 108–7, 117 Stat. 22.

Gary McBryde,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 04–20432 Filed 9–8–04; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 46–2003]

Pepsi-Cola Manufacturing International, Ltd.—Subzone 61J, Cidra, Puerto Rico; Application for Expansion of Scope of Manufacturing Authority Amendment of Application

Notice is hereby given that the application by the Puerto Rico Exports Development Corporation (68 FR 54888, 9–19–2003), grantee of FTZ 61, on behalf of Pepsi-Cola Manufacturing International, Ltd. (PCMIL), operator of FTZ 61J, requesting an expansion of the scope of manufacturing authority to include additional finished products and manufacturing capacity under FTZ procedures at the PCMIL soft drink and juice beverage concentrate manufacturing plant, has been amended to alter the proposed scope of authority regarding the use of foreign-origin orange juice and grapefruit juice concentrates. As a result of consultations with interested parties within domestic industry, PCMIL has amended the proposed scope of authority regarding foreign ingredients by indicating that all foreign-origin orange juice and grapefruit juice (classified under HTSUS Heading 2009) to be used in the manufacture of juice beverage concentrate products under FTZ procedures would be admitted to Subzone 61J under privileged foreign status (19 CFR 146.41), thereby deleting inverted tariff savings on these products from the proposed FTZ benefits. The application remains otherwise unchanged.

A copy of the amended application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005. The comment period is reopened until October 6, 2004.

Dated: September 2, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–20465 Filed 9–8–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil; Final Results of the Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset reviews of antidumping duty order on certain hot-rolled flat-rolled carbon-quality steel products from Brazil.

SUMMARY: On May 3, 2004, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order of certain hot-rolled flat-rolled carbon-quality steel products (''hot-rolled steel'') from

Brazil.[1] On the basis of the notice of intent to participate, adequate substantive comments filed on behalf of the domestic interested parties, and inadequate response from respondent interested parties (in this case, no response), the Department conducted an expedited sunset review of the antidumping duty order pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(B) of the Department's regulations. As a result of this sunset review, the Department determined that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Review''.

EFFECTIVE DATE: September 9, 2004.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington DC, 20230; telephone: 202–482–5050.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2004, the Department initiated a sunset review of the antidumping duty order on hot-rolled steel products from Brazil in accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See* Notice of Initiation, 69 FR 24118 (May 3, 2004).

The Department received notices of intent to participate within the applicable deadline specified in section 351.218(d)(1)(i) of the Department's regulations on behalf of Nucor Corporation (''Nucor''), United States Steel Corporation (''U.S. Steel''), International Steel Group, Inc. (''ISG''), Gallatin Steel Company (''Gallatin''), IPSCO Steel Inc. (''IPSCO''), and Steel Dynamics, Inc. (''SDI'') (collectively ''domestic interested parties''). The domestic interested parties claimed interested-party status as U.S. producers of subject merchandise as defined by section 771(9)(C) of the Act.

The Department received complete substantive responses from the domestic interested parties within the 30-day deadline specified in the Department's regulations under § 351.218(d)(3)(i). However, the Department did not receive any responses from respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of this antidumping duty order.

This antidumping duty order remains in effect for manufacturers, producers, and exporters of hot-rolled steel from Brazil.

Scope of the Order

See Appendix 1.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated August 31, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the antidumping duty order were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memo, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn,* under the heading ''September 2004.'' The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

The Department determines that revocation of the antidumping duty order on hot-rolled steel from Brazil would likely lead to continuation or recurrence of dumping at the following weighted-average margins:

Manufacturers/producers/exporter's	Weighted-average margin (percent)
Compendia Siderurgica Nacional (CSN)	41.27
Usinas Siderurgicas De Minas Gerais (USIMINAS)/	43.40
Companhia Siderurgica Paulista (COSIPA)	43.40
''All Others''	42.12

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 31, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

Appendix 1—Scope of the Order: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil

For purposes of this order, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order. Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'') steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. Steel products to be included in the scope of this order, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.012 percent of boron, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

[1] *See Initiation of Five-Year (''Sunset'') Reviews*, 69 FR 24118 (May 3, 2004) (''Notice of Initiation'').

—Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.*, ASTM specifications A543, A387, A514, A517, and A506).
—SAE/AISI grades of series 2300 and higher.
—Ball bearing steels, as defined in the HTSUS.-Tool steels, as defined in the HTSUS.
—Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.-ASTM specifications A710 and A736.
—USS Abrasion-resistant steels (USS AR 400, USS AR 500).
—Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

(**Note:** The following TABLE/FORM is too wide to be displayed on one screen. You must print it for a meaningful review of its contents. The table has been divided into multiple pieces with each piece containing information to help you assemble a printout of the table. The information for each piece includes: (1) A three line message preceding the tabular data showing by line # and character # the position of the upper left-hand corner of the piece and the position of the piece within the entire table; and (2) a numeric scale following the tabular data displaying the character positions.)

This is piece 1.—It begins at character 1 of table line 1.

C Mn P S Si Cr
0.10–0.14% .. 0.90% Max 0.025% Max 0.005% Max .. 0.30–0.50% .. 0.30–0.50% ...
1...+...10....+...20....+...30....
+...40....+...50....+...60....+...70....+...

This is piece 2.—It begins at character 79 of table line 1.

Cu Ni
0.20–0.40% 0.20%
Max.
79....+...90....+...
Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches;
Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

—Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

(**Note:** The following TABLE/FORM is too wide to be displayed on one screen. You must print it for a meaningful review of its contents. The table has been divided into multiple pieces with each piece containing information to help you assemble a printout of the table. The information for each piece includes: (1) A three line message preceding the tabular data showing by line # and character # the position of the upper left-hand corner of the piece and the position of the piece within the entire table; and (2) a numeric scale following the tabular data displaying the character positions.)

This is piece 1.—It begins at character 1 of table line 1.

C Mn P S Si Cr
0.10–0.16% .... 0.70–0.90% 0.025% Max 0.006% Max .. 0.30–0.50% .. 0.30–0.50%
Mo ....
0.21% Max ... .
1...+...10....+...20....+...30....
+...40....+...50....+...60....+...70....+....

This is piece 2.—It begins at character 80 of table line 1.

Cu Ni
0.25% Max 0.20%
Max
....
....
80..+...90....+....
Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

—Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

(**Note:** The following TABLE/FORM is too wide to be displayed on one screen. You must print it for a meaningful review of its contents. The table has been divided into multiple pieces with each piece containing information to help you assemble a printout of the table. The information for each piece includes: (1) A three line message preceding the tabular data showing by line # and character # the position of the upper left-hand corner of the piece and the position of the piece within the entire table; and (2) a numeric scale following the tabular data displaying the character positions.)

This is piece 1.—It begins at character 1 of table line 1.

C Mn P S Si Cr
0.10–0.14% .. 1.30–1.80% .. 0.025% Max 0.005% Max .. 0.30–0.50% .. 0.50–0.70%
V(wt.) ..... Cb ....
0.10% Max ... 0.08% Max ... .
1...+...10....+...20....+...30....
+...40....+...50....+...60....+...70....+....

This is piece 2.—It begins at character 80 of table line 1.

Cu Ni
.. 0.20–0.40% 0.20%
Max..... .....
....
80..+...90....+....0..
Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

—Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

(**Note:** The following TABLE/FORM is too wide to be displayed on one screen. You must print it for a meaningful review of its contents. The table has been divided into multiple pieces with each piece containing information to help you assemble a printout of the table. The information for each piece includes: (1) a three line message preceding the tabular data showing by line # and character # the position of the upper left-hand corner of the piece and the position of the piece within the entire table; and (2) a numeric scalefollowing the tabular data displaying the character positions.)

This is piece 1.—It begins at character 1 of table line 1.

C Mn P S Si Cr Cu
0.15% Max. 1.40% Max 0.025% Max 0.010% Max 0.50% Max 1.00% Max 0.50% Max
Nb ..... Ca ..... Al ....
0.005% Min Treated .. 0.01–0.70% ....
1...+...10....+...20....+...30....+
...40....+...50....+...60....+...70....+....

This is piece 2.—It begins at character 80 of table line 1.

Ni
0.20%Max.....
.....
80..+...
Width = 39.37 inches; Thickness = 0.181 inches maximum;
Yield Strength = 70,000 psi minimum for thicknesses <= 0.148 inches and 65,000 psi minimum for thicknesses > 0.148 inches; Tensile Strength = 80,000 psi minimum.

—Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm ^{2} and 640 N/mm ^{2} and an elongation percentage ''26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm ^{2} and 690 N/mm ^{2} and an elongation percentage ''25 percent for thicknesses of 2 mm and above.
—Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.
—Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this order is classified in the Harmonized Tariff

Schedule of the United States (HTSUS) at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this order, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under this order is dispositive.

[FR Doc. E4–2101 Filed 9–8–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–809]

Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation; Final Results of the Expedited Sunset Review of Antidumping Duty Suspended Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of expedited sunset review of the suspended antidumping duty investigation of certain hot-rolled flat-rolled carbon-quality steel products from the Russian Federation; final results.

SUMMARY: On May 3, 2004, the Department of Commerce (''the Department'') initiated a sunset review of the suspended antidumping duty investigation of certain hot-rolled flat-rolled carbon-quality steel products (''hot-rolled steel'') from the Russian Federation (''Russia'').[1] On the basis of the notice of intent to participate, adequate substantive comments filed on behalf of the domestic interested parties, and inadequate response from respondent interested parties, the Department conducted an expedited sunset review of the suspended antidumping duty investigation pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C) of the Department's regulations. As a result of this sunset review, the Department determined that termination of the suspended antidumping duty investigation would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Review''.

EFFECTIVE DATE: September 9, 2004.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–5050.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2004, the Department initiated a sunset review of the suspended antidumping duty investigation on hot-rolled steel products from Russia in accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See* Notice of Initiation, 69 FR 24118 (2004).

Section 351.218(d)(1)(i) of the Department's regulations provides domestic interested parties opportunity to file a Notice of Intent to Participate in a Sunset Review within 15 days of initiation of review. The Department received notices of intent to participate within the applicable deadline specified in § 351.218(d)(1)(i) of the Department's regulations on behalf of Nucor Corporation (''Nucor''), United States Steel Corporation (''U.S. Steel''), International Steel Group, Inc. (''ISG''), Gallatin Steel Company (''Gallatin''), IPSCO Steel Inc. (''IPSCO''), and Steel Dynamics, Inc. (''SDI''), and Ispat Inland Inc. and its division Ispat Inland Flat Products (''Ispat Inland'') (collectively ''domestic interested parties''). The domestic interested parties claimed interested-party status as producers of subject merchandise in the United States as defined by section 771(9)(C) of the Act.

The Department's regulations at § 351.218(d)(3)(i) states that all interested parties participating in a sunset review must submit a complete substantive response to a Notice of Initiation within 30 days of initiation of the sunset review. On June 2, 2004, the Department received complete substantive responses from the domestic interested parties within the 30-day deadline specified in the Department's regulations under § 351.218(d)(3)(i). However, the Department did not receive any responses from respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and § 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted an expedited 120-day, sunset review of this suspended antidumping duty investigation.

This suspended antidumping duty investigation remains in effect for Russian producers and exporters of subject merchandise.

Scope of the Suspended Investigation

See Appendix 1.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated August 31, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the suspended investigation were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memo, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*, under the heading ''September 2004.'' The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

The Department determines that termination of the suspended antidumping duty investigation on hot-rolled steel from Russia would likely lead to continuation or recurrence of dumping at the following weighted-average margins:

[1] *See Initiation of Five-Year (''Sunset'') Reviews*, 69 FR 24,118 (May 3, 2004) (''Notice of Initiation'').

Manufacturers/producers/exporter's	Weighted-average margin (percent)
JSC Severstal	73.59
Russia-Wide Rate	184.56

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion of APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act. p

Dated: August 31, 2004.

James J. Jochum

Assistant Secretary for Import Administration.

Appendix 1—Scope of the Suspended Investigation on Hot-Rolled Steel From Russia (A–821–809)

For purposes of this sunset review, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review. Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. Steel products to be included in the scope of this review, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.012 percent of boron, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this review unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this review: Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.,* ASTM specifications A543, A387, A514, A517, and A506) SAE/AISI grades of series 2300 and higher. Ball bearing steels, as defined in the HTSUS. Tool steels, as defined in the HTSUS. Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent. ASTM specifications A710 and A736. USS Abrasion-resistant steels (USS AR 400, USS AR 500). Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensil Strength = 70,000–88,000 psi.

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16% ..	0.70–0.90% ..	0.025% Max	0.006% Max	0.30–0.50% ..	0.50–0.70% ..	0.25% Max ...	0.20% Max ...	0.21% Max.

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V(wt.)	Cb
0.10–0.14%	1.30–1.80%	0.025% Max.	0.005% Max.	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max	0.10 Max ...	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications.

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max.	0.025% Max.	0.010% Max.	0.50% Max.	1.00% Max.	0.50% Max.	0.20% Max.	0.005% Max.	Treated ...	0.01–0.07%.

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thickness ≤ 0.148 inches and 65,000 psi minimum for ''thicknesses'' > 0.148 inches; account for 64 FR 38650; Tensile Strength = 80,000 psi minimum.

Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by silicon by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage > 26 percent account for 64 FR 38650, for thickness of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 640 N/mm^2 and an elongation percentage ≥ 25 percent for thickness of 2 mm and above.

Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 nominal), mill edge and skin passed, with a minimum copper content of 0.20 percent.

The covered merchandise is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') as subheadings:

The merchandise subject to this sunset review is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this sunset review including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the covered merchandise is dispositive.

[FR Doc. E4–2103 Filed 9–8–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of sixth antidumping duty new shipper review and final results and partial rescission of the fourth antidumping duty administrative review.

SUMMARY: On March 5, 2004, the Department of Commerce published the preliminary results of the sixth new shipper review and the fourth administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC''). The new shipper review covers one exporter, Primera Harvest (Xiangfan) Co., Ltd. (''Primera Harvest''), and the administrative review covers six exporters (*see* ''Background'' section below for further discussion). The period of review is February 1, 2002, through January 31, 2003.[1] We gave interested parties an opportunity to comment on our preliminary results.

Based on the additional publicly available information used in these final results and the comments received from the interested parties, we have made changes in the margin calculations for certain respondents in these reviews. The final weighted-average dumping margins for the reviewed firms in these reviews are listed below in the section entitled ''Final Results of Reviews.''

EFFECTIVE DATE: September 9, 2004.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–1766.

[1] The period of review (''POR'') for both the new shipper review and administrative review is the same.

SUPPLEMENTARY INFORMATION:

Background

While the Department initiated an administrative review of 11 companies,[2] based on a request by the petitioner [3] and certain exporters, this administrative review now covers only the following six exporters: (1) COFCO; (2) Gerber; (3) Green Fresh; (4) Guangxi Yulin; (5) Shantou Hongda; and (6) Shenxian Dongxing (*see* ''Partial Rescission of Administrative Review'' section of this notice for further discussion).

On March 5, 2002, the Department published in the **Federal Register** the preliminary results of the sixth new shipper review and the fourth administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC'') (*see Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Sixth Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review,* 69 FR 10410 (March 5, 2004) (''*Preliminary Results*''). Also on March 5, 2004, we issued COFCO another supplemental questionnaire to which it responded on March 31, 2004.

On March 10, 2004, COFCO requested an extension of the deadline to submit publicly available information in the administrative review until April 30, 2004, which we granted to all interested parties in both reviews on March 12, 2004.

[2] The petitioner's request for review included the following companies: (1) China Processed Food Import & Export Company (''COFCO''); (2) Gerber Food Yunnan Co., Ltd. (''Gerber''); (3) Green Fresh Foods (Zhangzhou) Co., Ltd. (''Green Fresh''); (4) Guangxi Yulin Oriental Food Co., Ltd. (''Guangxi Yulin''); (5) Raoping Xingyu Foods Co., Ltd. (''Raoping Xingyu''); (6) Shantou Hongda Industrial General Corporation (''Shantou Hongda''); (7) Shenxian Dongxing Foods Co., Ltd. (''Shenxian Dongxing''); (8); Shenzhen Qunxingyuan Trading Co., Ltd. (''Shenzhen Qunxingyuan''), (9) Xiamen Zhongjia Imp. & Exp. Co., Ltd. (''Zhongjia''); (10) Zhangzhou Jingxiang Foods Co., Ltd. (''Zhangzhou Jingxiang''); and (11) Zhangzhou Longhai Minhui Industry and Trade Co., Ltd. (''Minhui'').

[3] 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.

On March 18, 2004, we issued Guangxi Yulin a supplemental questionnaire to clarify certain issues raised by the petitioner in its February 12, 2004, submission.

On March 22, 2004, the petitioner requested a hearing in these reviews.

On March 25, 2004, in accordance with 19 CFR 351.301(c)(3), we received additional publicly available information for soil and rice hulls from Primera Harvest.

On April 12, 2004, Guangxi Yulin submitted its response to the Department's March 18, 2004, request for additional clarification.

On April 15, 2004, COFCO requested an additional extension of the deadline to submit publicly available information in the administrative review until May 31, 2004, which we granted to all interested parties in both reviews on April 16, 2004.

On May 3, 2004, the Department published in the **Federal Register** a notice of postponement of the final results until no later than September 1, 2004 (69 FR 24132).

On May 12, 2004, we issued COFCO a supplemental questionnaire which requested information to determine whether its affiliates China National Cereals, Oils, & Foodstuffs Import & Export Corporation (''China National''), COFCO (Zhangzhou) Food Industrial Co., Ltd. (''COFCO Zhangzhou''), Fujian Zishan Group Co. (''Fujian Zishan''), Xiamen Jiahua Import & Export Trading Co., Ltd. (''Xiamen Jiahua''), and Fujian Yu Xing Fruit & Vegetable Foodstuff Development Co. (''Yu Xing'') (hereafter referred to as ''affiliates'') were entitled to a separate rate. On May 26, 2004, COFCO and its affiliates submitted their response to the Department's May 12, 2004, supplemental questionnaire.

On May 20, 2004, the Department issued verification outlines to COFCO and its affiliates. The Department conducted verification of the responses of COFCO and its affiliates during the period May 31, through June 16, 2004. On June 30 and July 6, 2004, the Department issued the verification reports for COFCO and its affiliates.

On June 1, 2004, we received additional publicly available information from COFCO. On June 14, 2004, the petitioner submitted rebuttal comments.

On June 17, 2004, Gerber and Green Fresh submitted unsolicited new factual information with respect to their relationship during the period of this review.

On June 24, 2004, COFCO and Guangxi Yulin requested that the Department return the additional publicly available information submitted in the petitioner's June 14, 2004, submission. On July 1, 2004, the petitioner responded to COFCO and Guangxi Yulin's June 24, 2004, letter.

On June 30, 2004, we provided the petitioner with an opportunity to comment on the information contained in Gerber and Green Fresh's June 17, 2004, letter, to which the petitioner responded on July 12, 2004.

On July 6, 2004, we issued Guangxi Yulin a supplemental questionnaire to address certain comments submitted by the petitioner on May 11, 2004. Guangxi Yulin submitted its response to that supplemental questionnaire on July 12, 2004.

The petitioner and three respondents, COFCO, Guangxi Yulin, and Primera Harvest, submitted their case briefs on July 21, 2004. On July 29, 2004, the petitioner and five respondents, COFCO, Gerber, Green Fresh, Guangxi Yulin, and Primera Harvest, submitted rebuttal briefs. The other respondents participating in these reviews did not submit case or rebuttal briefs.

On July 29, 2004, we placed on the record publicly available information on land lease costs for consideration in the final results and provided all interested parties until August 5, 2004, to submit comments on this data.

On August 3, 2004, the petitioner withdrew its request for a hearing in these reviews. No other party requested a hearing, as specified under 19 CFR 351.310(c).

On August 4, 2004, we determined that Gerber and Green Fresh had submitted new arguments in their rebuttal brief in violation of 19 CFR 351.309(d)(2), and requested these parties to remove this information and resubmit their rebuttal brief. On August 6, 2004, Gerber and Green Fresh resubmitted their rebuttal brief accordingly.

On August 5, 2004, COFCO, Gerber, and Green Fresh submitted comments on the publicly available information we had placed on the record on July 29, 2004. On August 16, 2004, the petitioner submitted rebuttal publicly available information and comments on the land lease value comments submitted by certain respondents on August 5, 2004.

The Department has conducted these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act'').

Scope of the Order

The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this 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, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this 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 this 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.[4]

The merchandise subject to this 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, the written description of the scope of this order is dispositive.

Period of Reviews

The POR is February 1, 2002, through January 31, 2003.

Verification

As provided in section 782(i)(2) of the Act, we verified information provided by COFCO and its affiliates. We used standard verification procedures, including on-site inspection of the manufacturers' and exporters' facilities, and examination of relevant sales and financial records. Our verification results are outlined in the verification report for each company. (For further discussion, *see* June 30, 2004, verification report for COFCO

[4] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* ''Recommendation Memorandum—Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. This decision is currently on appeal.

Zhangzhou in the fourth antidumping duty administrative review (''COFCO Zhangzhou verification report''); June 30, 2004, verification report for Fujian Zishan in the fourth antidumping duty administrative review (''Fujian Zishan verification report''); June 30, 2004, verification report for Xiamen Jiahua in the fourth antidumping duty administrative review (''Xiamen Jiahua verification report''); June 30, 2004, verification report for Yu Xing in the fourth antidumping duty administrative review (''Yu Xing verification report''); and July 6, 2004, verification report for China National and COFCO in the fourth antidumping duty administrative review (''China National/COFCO verification report'').)

Duty Absorption

On March 5, 2004, the petitioner reiterated its request that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. None of the respondents in the administrative review reported that they sold subject merchandise through an affiliated importer during the POR, and only one respondent (*i.e.*, Gerber) reported that it acted as importer of record for all its U.S. sales during the POR. Because the administrative review was initiated four years after the publication of the order, and Gerber acted as importer of record for all of its U.S. sales, we must make a duty absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Act.

On March 8, 2004, the Department requested evidence from the respondents that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period. In determining whether the antidumping duties have been absorbed by the respondents during the POR on sales for which they were the importer of record, we presume that the duties will be absorbed for those sales that have been made at less than normal value (NV). This presumption can be rebutted with evidence (*e.g.*, an agreement between the respondent/importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. Although Shenxian Dongxing responded to the Department's request for information, the data it provided indicates that Shenxian Dongxing was not the importer of record for its U.S. sales of subject merchandise during the POR. None of the other respondents in the administrative review, including Gerber, responded to the Department's request for information. Accordingly, based on the record, we cannot conclude that the unaffiliated purchaser in the United States will pay the full duty ultimately assessed. Therefore, we find that antidumping duties have been absorbed by the foreign producer or exporter during the POR on those sales for which Gerber was the importer of record.

Partial Rescission of Administrative Review

We rescinded this review with respect to Minhui and Zhongjia pursuant to 19 CFR 351.213(d)(1), because the petitioner withdrew its request for review and these companies did not request a review of these companies in a timely manner in accordance with section 751(a)(1) of the Act. *See Certain Preserved Mushrooms from the People's Republic of China: Notice of Partial Rescission of Fourth Antidumping Duty Administrative Review*, 68 FR 63065 (November 7, 2003) (''*Rescission Notice*''). We also rescinded this review with respect to Raoping Xingyu and Shenzhen Qunmingyuan pursuant to 19 CFR 351.213(d)(3), because the shipment data we examined did not show U.S. entries of the subject merchandise during the POR from these companies (*see* also *Rescission Notice*, 68 FR at 63065).

We are also rescinding this review with respect to Zhangzhou Jingxiang pursuant to 19 CFR 351.213(d)(3), because the shipment data we examined did not show U.S. entries of the subject merchandise during the POR from this company (*see Preliminary Results*, 69 FR at 10412).

Facts Available—Shantou Hongda

In the *Preliminary Results*, 69 FR at 10417, the Department determined that the use of adverse facts available (''AFA'') was warranted in accordance with sections 776(a) and 776(b) of the Act, with respect to Shantou Hongda. Section 776(a)(2) of the Act states that the Department may use ''facts available'' if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide information in the time and manner requested, (C) significantly impedes a proceeding under this title or (D) provides such information but the information cannot be verified. Furthermore, pursuant to section 776(b) of the Act, the Department may apply an adverse inference if it finds a respondent has not acted to the best of its ability in the conduct of the administrative review. Because Shantou Hongda refused to allow the Department to conduct verification of its submitted information, we determined that Shantou Hongda did not cooperate to the best of its ability. Since the preliminary results, nothing has changed to reverse our preliminary decision regarding Shantou Hongda and Shantou Hongda has filed no comments on the record addressing the Department's preliminary results. Therefore, pursuant to sections 776(a) and 776(b) of the Act, we have continued to make an adverse inference with respect to Shantou Hongda by assigning to its exports of the subject merchandise a rate of 198.63 percent, which is the PRC-wide rate.

Facts Available—Gerber

In the *Preliminary Results*, 69 FR at 10415–10416, the Department determined that the use of AFA was also warranted in accordance with sections 776(a) and 776(b) of the Act with respect to Gerber. This determination was based on the Department's finding that Gerber participated in an agreement/scheme with another respondent Green Fresh during the prior POR which extended into the current POR, and which resulted in the circumvention of the antidumping duty order and the evasion of payment of the appropriate level of cash deposits. Specifically, the Department found that Gerber used the invoices of Green Fresh (which had a substantially lower cash deposit rate), rather than its own invoices, for numerous transactions during this POR. As a result, Gerber did not submit to U.S. Customs and Border Protection (''CBP'') the appropriate cash deposits for these transactions. Furthermore, the Department also found that Gerber did not act to the best of its ability in its reporting of information to the U.S. government, both at the time of entry of the merchandise and in its previous submissions to the Department, relating to the agreement between Gerber and Green Fresh which directly pertained to the transactions under review in this POR.

As explained in *Certain Preserved Mushrooms in the People's Republic of China: Final Results and Partial Rescission of New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003), and accompanying Issues and Decision Memorandum at

Comment 1 (''*Third Administrative Review*''), the Department has discretion to administer the law in a manner that prevents evasion of the order. (*See Tung Mung Development* v. *United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002), *appeal entered* (''*Tung Mung* v. *United States*'')). Moreover, as the Court noted in *Tung Mung* v. *United States*, citing *Mitsubishi Electric*, the Department has a responsibility to apply its law in a manner that prevents the evasion of antidumping duties: ''The ITA has been vested with authority to administer the antidumping laws in accordance with the legislative intent. To this end, the ITA has a certain amount of discretion [to act] * * * with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law. *Mitsubishi Elec. Corp.* v. *United States*, 12 C.I.T. 1025, 1046, 700 F. Supp. 538, 555 (1988), aff'd 898 F.2d 1577 (Fed. Cir. 1990).'' *Id. See also Queen's Flowers De Colombia* v. *United States*, 981 F. Supp. 617, 621 (CIT 1997) (determining that the Department's decision to define the term ''company'' to include several closely related companies was a permissible application of the statute, given its ''responsibility to prevent circumvention of the antidumping law''); and *Hontex Enterprises, Inc.*, et al. v. *United States*, 248 F. Supp. 1323, 1343 (CIT 2003) (finding that the Department's decision to increase the scope of its analysis to include non-market economy (''NME'') exporters was reasonable in light of its ''responsibility to prevent circumvention of the antidumping law'').

Accordingly, in the *Preliminary Results*, the Department exercised its discretion to administer the law in a manner that prevents evasion of the order by assigning Gerber the PRC-wide rate of 198.63 percent as total AFA. Since the preliminary results, nothing has changed to reverse our preliminary decision regarding Gerber. Therefore, pursuant to section 776(b) of the Act, we have continued to make an adverse inference with respect to Gerber by assigning to its exports of the subject merchandise a rate of 198.63 percent, which is the PRC-wide rate.

Facts Available—Green Fresh

In the *Preliminary Results*, 69 FR at 10416–10417, the Department determined that the use of partial AFA was warranted, in accordance with sections 776(a) and 776(b) of the Act, with respect to Green Fresh because the Department held that Green Fresh did not act to the best of its ability in proving to the Department that it did not assist Gerber in the continuation of the scheme to circumvent the antidumping duty order during the POR. As explained in the *Third Administrative Review* (69 FR at 41306), Green Fresh's business relationship with Gerber, which began in the prior POR, allowed Gerber to circumvent the antidumping duty order and to evade the proper payment of cash deposits. Although Green Fresh claimed in its questionnaire responses that it did not provide Gerber with any of its sales invoices during this POR and that it believed that its business relationship with Gerber was terminated during the prior POR, the terms of the agreement between Green Fresh and Gerber stated that the relationship ran through this POR, and the general manager of Green Fresh indicated that he was aware Gerber disputed that the agreement was no longer in place (*see* page 7 of the February 12, 2003, Green Fresh verification report from the prior administrative review which was placed on the record of this review on February 13, 2004). Furthermore, Green Fresh provided no evidence on the record that it took measures to prevent Gerber from continuing to use its invoices in this POR and from actively circumventing the antidumping duty order and evading the payment of cash deposits during the POR. Accordingly, because (1) Green Fresh's arrangement with Gerber allowed Gerber to circumvent the antidumping duty order and payment of cash deposits; (2) Green Fresh was aware that Gerber believed the agreement still permitted use of Green Fresh's invoices; and (3) Green Fresh provided no evidence on the record that it attempted to prevent the use of its invoices by Gerber during this POR, the Department has determined that Green Fresh did not act to the best of its ability, pursuant to section 776(b) of the Act, in overcoming a presumption that Green Fresh aided in the circumvention of the antidumping duty order during the POR.

Accordingly, in order to protect the integrity of its administrative proceeding, the Department found that the application of partial AFA pursuant to sections 776(a) and 776(b) of the Act was warranted for Green Fresh with respect to the Gerber-Green Fresh transactions. As facts available, we determined that because certain Gerber transactions identified Green Fresh as the exporter and because those transactions used Green Fresh's invoices, these specific transactions should be attributed to Green Fresh in our calculations. The Department determined it was appropriate to use those transactions in Green Fresh's calculation for two reasons: (1) Because those transactions were reported to the U.S. government as Green Fresh's sales upon importation; and (2) even if Gerber's claims were truthful about not affirmatively knowing that its invoices continued to be used by Gerber in this POR, its silent allowance of Gerber to use its invoices in circumventing the antidumping duty law, and failure to demand return of all unused invoices, was no different in its effect than its active assistance to further the contractual scheme in the previous POR. Thus, as partial AFA, the Department applied the PRC-wide rate of 198.63 percent to those sales made by Gerber using Green Fresh's invoices.

Since the preliminary results, Gerber and Green Fresh submitted email correspondence between them and their counsel which stated that Gerber continued to use Green Fresh's invoices during this POR without Green Fresh's prior knowledge (*see* June 17, 2004, submission from Gerber and Green Fresh). We do not consider the undated email correspondence submitted by Gerber and Green Fresh on this matter after the *Preliminary Results* to constitute evidence that Green Fresh attempted to stop Gerber from using its invoices to actively circumvent the antidumping duty order during the POR. Therefore, pursuant to section 776(b) of the Act, we have continued to make an adverse inference with respect to Green Fresh by applying the PRC-wide rate of 198.63 percent to those sales made by Gerber using Green Fresh's invoices.

Corroboration of Facts Available

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure based on secondary information which it applies as AFA. To be considered corroborated, the information must be found to be both reliable and relevant, and thus determined to have probative value. For the reasons explained above, we are applying as AFA the highest rate from any segment of this proceeding, 198.63 percent, which is the current PRC-wide rate originally calculated in the less-than-fair-value (''LTFV'') investigation. (*See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China*, 64 FR 8308, 8310 (February 19, 1999).) For the reasons stated in the *Preliminary Results*, 69 FR at 10417, the Department finds this rate to be both reliable and relevant, and, therefore, to have probative value in accordance with the Statement of Administrative Action,

H.R. Doc. 103–316 (''SAA''). *See* SAA at 870. No party has challenged the Department's preliminary corroboration analysis for purposes of the final results. Therefore, we have continued to assign to exports of the subject merchandise by both Gerber and Shantou Hongda, and for certain sales made with Green Fresh's invoices which Green Fresh did not report in its questionnaire response, the rate of 198.63 percent.

Collapsing—COFCO and Affiliates

In the *Preliminary Results*, 69 FR at 10413, we collapsed the respondent exporter COFCO with three affiliated producers of subject merchandise (only one of which provided COFCO with preserved mushrooms for export to the United States during the POR). We emphasized in the *Preliminary Results* that we would consider collapsing affiliated producers in the NME context on a case-by-case basis as long as it did not conflict with our NME methodology or separate rates test. While we also determined that COFCO was affiliated with two other exporters (neither of which exported preserved mushrooms to the United States during the POR), we did not include these companies in our collapsing decision. Moreover, we assigned the resulting margin only to COFCO, not the collapsed entity, in accordance with our normal NME practice to assign separate rates only to respondent exporters. We did not specifically address the issue of whether COFCO's rate should be applied to its affiliates because we needed to obtain information from its affiliates in order to make a separate rates determination in relation to the entity as a whole. Since the *Preliminary Results*, we issued all of COFCO's affiliates a separate rate questionnaire and verified the data reported.

After reconsideration of the record facts and based on our verification findings, we determined it appropriate to collapse COFCO with five of its affiliates-three producers (*i.e.*, Yu Xing, COFCO Zhangzhou and Fujian Zishan) and two exporters (*i.e.*, China National and Xiamen Jiahua)—in accordance with section 771(33) of the Act and the criteria enumerated in 19 CFR 351.401(f), for purposes of the final results. We note that our rationale for collapsing, *i.e.*, to prevent manipulation of price and/or production, applies to both producers and exporters, if the facts indicate that producers of like merchandise are affiliated as a result of their mutual relationship with an exporter. Furthermore, we applied the ''collapsed'' rate to COFCO and all of the above-mentioned affiliates comprising the collapsed entity because we determined that the entity as a whole is entitled to a separate rate (*see* ''Separate Rates'' section below). This determination is specific to the facts presented in this review and based on several considerations, including the structure of the collapsed entity, the level of control between/among affiliates and the level of participation by each affiliate in the proceeding. For further discussion, *see Decision Memo* at Comment 1.

Separate Rates

In the *Preliminary Results,* 69 FR at 10418, we considered only respondent exporters in our separate rates analysis and granted a separate rate to COFCO, Primera Harvest, Guangxi Yulin, Shenxian Dongxing and Green Fresh. For purposes of the final results, this analysis has not changed for any respondent exporter except COFCO. For COFCO, we have revisited our separate rates analysis as a result of our collapsing decision discussed above, and have now considered COFCO and the five affiliates mentioned above as a collapsed entity for purposes of determining whether or not the collapsed entity as a whole is entitled to a separate rate.

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (*i.e.*, a PRC-wide rate). COFCO is owned by its affiliate China National, an exporter, which is owned by ''all of the people.'' COFCO also owns in part two preserved mushroom producers, COFCO Zhangzhou and Yu Xing. (Yu Xing has export rights but has never directly exported.) In addition to COFCO, China National owns in part Xiamen Jiahua (*i.e.*, a preserved mushroom exporter) and Xiamen Jiahua owns in part Fujian Zishan (*i.e.*, another preserved mushroom producer which also has export rights). Thus, a separate-rates analysis is necessary to determine whether the export activities of the collapsed entity as a whole are independent from government control. (*See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China* (''*Bicycles*''), 61 FR 56570 (April 30, 1996).) To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

1. De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over exporter activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

COFCO and its affiliates have placed on the administrative record the following documents to demonstrate absence of *de jure* control: The 1994 ''Foreign Trade Law of the People's Republic of China;'' and the ''Company Law of the PRC,'' effective as of July 1, 1994. In other cases involving products from the PRC, respondents have submitted the following additional documents to demonstrate absence of *de jure* control, and the Department has placed these additional documents on the record as well: The ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1988 (''the Industrial Enterprises Law''); ''The Enterprise Legal Person Registration Administrative Regulations,'' promulgated on June 13, 1988; the 1990 ''Regulation Governing Rural Collectively-Owned Enterprises of PRC;'' and the 1992 ''Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises' (''Business Operation Provisions''). (*See* March 1, 2004, memorandum to the file which placed the above-referenced laws on the record of this proceeding segment.)

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of joint ventures and companies owned by ''all of the people'' absent proof on the record to the contrary. (*See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22544 (May 8, 1995) (''*Furfuryl Alcohol*''), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with*

Rollers from the People's Republic of China, 60 FR 29571 (June 5, 1995).)

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (*See Silicon Carbide*, 59 FR at 22587, and *Furfuryl Alcohol*, 60 FR at 22544.) Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a government authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. (*See Silicon Carbide*, 59 at 22587 and *Furfuryl Alcohol*, 60 FR at 22545.)

COFCO and its collapsed affiliates each have asserted the following, where applicable: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any government entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, this collapsed entity's questionnaire responses indicate that its pricing during the POR does not suggest coordination among exporters. Furthermore, we examined documentation at verification which substantiated its claims as noted above (*see* China National/COFCO verification report at 3–12; COFCO Zhangzhou verification report at 3–6; Fujian Zishan verification report at 4–8; Xiamen Jiahua verification report at 3–7; and Yu Xing verification report at 3–7). As a result, there is a sufficient basis to determine that COFCO and its affiliates listed above have demonstrated as a whole a *de facto* absence of government control of their export functions and are entitled to a separate rate. Consequently, we have determined that the ''collapsed'' entity has met the criteria for the application of a separate rate.

Analysis of Comments Received

All issues raised in the case briefs are addressed in the *Decision Memo*, which is hereby adopted by this notice. A list of the issues raised, 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 the briefs 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 Since the Preliminary Results

Based on the use of additional publicly available information submitted since the preliminary results, the comments received from the interested parties and verification findings, where applicable, we have made changes in the margin calculation for each respondent as noted below. For a discussion of these changes, *see* the ''Margin Calculations'' section of the *Decision Memo*.

As discussed above, we collapsed COFCO with its three affiliated producers and two affiliated exporters in accordance with section 771(33) of the Act and the criteria enumerated in 19 CFR 351.401(f). We also assigned the ''collapsed'' rate to COFCO and all of the affiliates which comprise the collapsed entity. *See* also *Decision Memo* at Comment 1.

For COFCO, we revised (1) the invoice numbers for five sales transactions reported in its November 10, 2003, U.S. sales listing; and (2) the amount reported in the field QTY2U for one U.S. sales transaction (*see* China National/COFCO Verification Report at page 3).

For Fujian Zishan, we revised (1) its reported consumption ratios for salt, disodium starrous citrate, sodium metabisulfite, rongalite, water, electricity, coal, heavy diesel oil; and (2) its reported usage ratios for direct, indirect and packing labor (*see* Fujian Zishan Verification Report at pages 3 and 19).

For Yu Xing, we revised (1) its reported consumption ratio for coal; and relied on (2) its labor usage ratios for canned brined mushroom production (*i.e.*, growing, collecting, and harvesting) and canned fresh mushroom production (*i.e.*, growing) as reported in exhibit 15 of its September 9, 2003, supplemental questionnaire response (''SQR'') rather than in its February 9, 2004, SQR (*see* Yu Xing Verification Report at pages 3 and 16).

For each of COFCO's collapsed producers, where applicable, we weight-averaged the normal values on a control number-specific basis rather than weight-averaging the factors reported for each control number. *See Decision Memo* at Comment 2.

We corrected a calculation error by comparing COFCO's reported U.S. prices per can, instead of its U.S. prices per kilogram drained weight, to NV (the factors of which were reported on a per-can basis). *See Decision Memo* at Comment 11.

For Green Fresh, we used the reported date of the sales invoice as the basis for determining which sales Green Fresh was required to report in the administrative review. *See Decision Memo* at Comment 6.

For Guangxi Yulin, we revised its per-unit direct labor calculation based on information submitted in its July 12, 2004, SQR.

For Primera Harvest, we corrected the per-unit consumption factor amounts for cotton seed meal and fertilizer noted in the Department's verification report and used in our preliminary margin calculation by multiplying the factor amounts for these inputs by the correct fresh mushrooms-to-canned mushrooms conversion ratio (''conversion ratio''). We corrected another error in our calculation by not applying the conversion ratio a second time to the factor amounts for these inputs in the margin program. For mother spawn, we also corrected the per-unit consumption factor amount noted in the verification report and used in our preliminary margin calculation by multiplying the factor amount for this input by the correct conversion ratio. *See Decision Memo* at Comment 15.

We calculated average surrogate percentages for factory overhead, and selling, general and administrative (''SG&A'') expenses using the 2002–2003 financial reports of Agro Dutch Foods Ltd. (''Agro Dutch'') and Flex Foods Ltd. (''Flex Foods''). We calculated a surrogate percentage for profit using only the 2002–2003 financial report of Flex Foods. *See Decision Memo* at Comment 8.

We corrected our SG&A calculation ratio for Agro Dutch by removing customs duties and freight from Agro Dutch's total SG&A expenses. *See Decision Memo* at Comment 9.

To value fresh mushrooms, we used purchase data contained in the 2002–2003 financial report of Premier

Explosives Ltd. (''Premier''). *See Decision Memo* at Comment 12.

To value chicken manure and spawn, we used data contained in the 2002–2003 financial reports of Agro Dutch, Flex Foods, and Premier.

To value cow manure and general straw, we used data contained in the 2002–2003 financial report of Agro Dutch and Flex Foods.

To value rice husks, we used May 2003 Indian price data from *Hindu Business Line. See Decision Memo* at Comment 14.

To value rice straw, we used data contained in Premier's 2002–2003 financial report.

To value gypsum, we used an average price based on February 2002–January 2003 data contained in *World Trade Atlas,* and data contained in Flex Foods' 2002–2003 financial report.

To value wheat grain and super phosphate, we used price data contained in Flex Foods' 2002–2003 financial report.

To value urea, we used an average price based on February 2002–January 2003 data contained in *Chemical Weekly* and *World Trade Atlas,* as well as data contained in Flex Foods' 2002–2003 financial report.

To reflect the correction of a conversion error, we revised the surrogate value used for tin plate in the *Preliminary Results* based on price data available in the 2002–2003 financial report of Agro Dutch and February 2002–January 2003 data from *World Trade Atlas.*

Final Results of Reviews

We determine that the following weighted-average margin percentages exist for the period February 1, 2002, through January 31, 2003:

Exporter	Margin (percent)
China Processed Food Import & Export Company (''COFCO'') (which includes its affiliates China National Cereals, Oils, & Foodstuffs Import & Export Corporation, COFCO (Zhangzhou) Food Industrial Co., Ltd., Fujian Zishan Group Co., Xiamen Jiahua Import & Export Trading Co., Ltd., and Fujian Yu Xing Fruit & Vegetable Foodstuff Development Co.)	3.92
Gerber Food (Yunnan) Co., Ltd	198.63
Green Fresh Foods (Zhangzhou) Co., Ltd	42.90
Guangxi Yulin Oriental Food Co., Ltd	0.00
Primera Harvest (Xiangfan) Co., Ltd	82.22
Shantou Hongda Industrial General Corporation	198.63
Shenxian Dongxing Foods Co., Ltd	66.50
PRC-Wide Rate	198.63

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions for the companies subject to these reviews directly to CBP within 15 days of publication of the final results of these reviews. For assessment purposes, we do not have the actual entered value for any of the respondents for which we calculated a margin because they are not the importers of record for the subject merchandise. Therefore, we have calculated individual importer- or customer-specific assessment rates by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing that amount by the total quantity of the sales examined. To determine whether the duty assessment rates are *de minimis* (*i.e.*, less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer- or customer-specific *ad valorem* ratios based on export prices. We will instruct CBP to assess antidumping duties on all appropriate entries covered by these reviews if any importer or customer-specific assessment rate calculated in the final results of these reviews is above *de minimis*. For entries of the subject merchandise during the POR from companies not subject to these reviews, we will instruct CBP to liquidate them at the cash deposit in effect at the time of entry.

Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from Primera Harvest of certain preserved mushrooms from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results.

The following deposit rates shall be required for merchandise subject to the order entered or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) and 751(a)(2)(B) of the Act: (1) The cash deposit rates for COFCO and its five affiliates (*i.e.*, China National, COFCO Zhangzhou, Fujian Zishan, Yu Xing, and Xiamen Jiahua), Gerber, Green Fresh, Guangxi Yulin, Primera Harvest (*i.e.*, for subject merchandise both manufactured and exported by Primera Harvest), Shantou Hongda, and Shenxian Dongxing will be the rates indicated above; (2) the cash deposit rate for PRC exporters for whom the Department has rescinded the review or for whom a review was not requested (*e.g.*, Zhangzhou Jingxiang, Minhui, Zhongjia, Raoping Xingyu, and Shenzhen Qunmingyuan) will continue to be the rate assigned in an earlier segment of the proceeding or the PRC-wide rate of 198.63 percent, whichever applicable; (3) the cash deposit rate for the PRC NME entity (including Gerber and Shantou Hongda) and for subject merchandise exported but not manufactured by Primera Harvest will continue to be the PRC-wide rate of 198.63 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. 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)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is

hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these determinations and notice in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.213 and 351.214.

Dated: September 1, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments

Issue 1: Collapsing of COFCO's Affiliates and Rate Assignment
Issue 2: Calculating a Weighted-Average Normal Value for Unique Products Which Were Produced by More Than One of COFCO's Affiliated Producers
Issue 3: Valuing the Intermediate Input for Producers Which Leased Farm Land to Produce the Intermediate Input
Issue 4: Shenxian Dongxing's Reported Mushroom Growing Inputs
Issue 5: Application of Facts Available to Gerber and Green Fresh
Issue 6: Inclusion of Green Fresh's U.S. Affiliate's Sales in the Margin Analysis and the Department's Affiliation Decision with Respect to Two of Green Fresh's U.S. Customers
Issue 7: Use of Publicly Available Information Contained in the Petitioner's June 14, 2004, Submission
Issue 8: Use of Flex Foods' Financial Data to Derive Surrogate Financial Percentages
Issue 9: Inclusion of Certain Expense Line Items to Derive an SG&A Surrogate Percentage Based on Agro Dutch's Financial Data
Issue 10: Deducting Foreign Inland Freight, Brokerage, and Handling Expenses from U.S. Price
Issue 11: U.S. Price to Normal Value Comparisons to Determine COFCO's Margin
Issue 12: Surrogate Value for Fresh Mushrooms
Issue 13: Surrogate Value for Soil
Issue 14: Surrogate Value for Rice Husks
Issue 15: Miscellaneous Corrections

[FR Doc. 04–20463 Filed 9–8–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–580–844]

Steel Concrete Reinforcing Bars From the Republic of Korea: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and final partial rescission of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is rescinding, in part, the second antidumping duty administrative review of steel concrete reinforcing bar (Rebar) from the Republic of Korea (Korea) because Dongkuk Steel Mill Co. Ltd. (DSM), INI Steel, Korea Iron and Steel Co. Ltd. (KISCO), and Kosteel Co., Ltd. (Kosteel) did not ship subject merchandise to the United States during the period of review. In addition, we continue to determine that the application of total adverse facts available (AFA) is warranted for Dongil Industries Co. Ltd. (Dongil) and Hanbo Iron & Steel Co. (Hanbo). The period of review (POR) is September 1, 2002, through August 31, 2003.

EFFECTIVE DATE: September 9, 2004.

FOR FURTHER INFORMATION CONTACT: Sam Zengotitabengoa or Mark Manning, Office 4, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4195 or (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by this administrative review is all rebar sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Background

On September 2, 2003, the Department published a notice of opportunity to request the second administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 68 FR 52181 (September 2, 2003). On September 30, 2003, in accordance with 19 CFR 351.213(b), the petitioner requested an administrative review of the following six manufacturers/exporters of rebar from Korea: Dongil, DSM, Hanbo, INI Steel, KISCO, and Kosteel. On October 24, 2003, the Department published the notice of initiation of this administrative review, covering the POR. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 60910 (October 24, 2003). DSM, INI Steel, KISCO, and Kosteel notified the Department that they had no sales or shipments of subject merchandise in the United States during the POR. The Department obtained data from U.S. Customs and Border Protection (CBP) that supported their claims of no entries during the POR. On June 8, 2004, the Department published the notice of preliminary results, and preliminary rescission of DSM, INI Steel, KISCO, and Kosteel. *See Steel Concrete Reinforcing Bar From The Republic of Korea: Notice of Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review*, 69 FR 31961 (June 8, 2004) (*Preliminary Results*). Because Dongil and Hanbo failed to respond to the Department's October 22, 2004, questionnaire and May 11, 2004, letter, the Department preliminarily found that the application of total AFA was warranted. (*See Preliminary Results.*) We provided all interested parties the opportunity to comment on our *Preliminary Results*. We received no comments.

Partial Rescission of Review

As mentioned above, we received no comments from interested parties on our preliminary decision to partially rescind the review. Since the record evidence indicates that DSM, INI Steel, KISCO, and Kosteel did not have sales or shipments of subject merchandise during the POR, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding this review for DSM, INI Steel, KISCO, and Kosteel because they had no shipments. *See e.g., Polychloroprene Rubber From Japan: Notice of Rescission of Antidumping Duty Administrative Review*, 66 FR 45005 (August 27, 2001).

Facts Available

Because Dongil and Hanbo failed to respond to the Department's October 22, 2003, questionnaire and May 11, 2004, letter, the Department preliminarily found that the application of total AFA was warranted. We received no comments from interested parties regarding our preliminary application of total AFA. Therefore, for these final results, we are continuing to apply total AFA exactly as described in the *Preliminary Results*.

Final Results of Review

As a result of our review, we continue to determine the following weighted-average dumping margins exist for the period September 1, 2002, through August 31, 2003:

Manufacturer/exporter	Weighted-average margin (percentage)
Dongil Industries Co., Ltd	102.28
Hanbo Iron & Steel Co., Ltd	102.28

Cash Deposit Rates

The following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of rebar from Korea 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 Tariff Act of 1930, as amended (the Act): (1) The cash deposit for Dongil and Hanbo will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent review period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LFTV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 22.89 percent, the ''all others'' rate made effective by the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the Republic of Korea*, 66 FR 33526 (June 22, 2001). These required cash deposit rates shall remain in effect until publication of the final results of the next administrative review.

Duty Assessments

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. According to 19 CFR 351.212(b)(1), the Department normally will calculate an assessment rate for each importer of subject merchandise covered by the review by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal customs duty purposes. In the instant review, for the respondents receiving dumping rates based upon AFA, the Department will instruct CBP to liquidate entries according to the AFA *ad valorem* rate. For any shipments by an exporter not identified in this review but entered under the cash deposit rates for DSM, INI Steel, KISCO, and Kosteel, the respondents for which this review is being rescinded, the Department will instruct CBP to assess antidumping duties on any such entries during the POR at the ''all others'' rate of 22.89 percent. The Department will issue appropriate appraisement instructions directly to CBP within fifteen days of publication of the final results of review.

Notification to Importers

This notice 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 subsequent assessment of double antidumping duties.

Administrative Protective Duties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO 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 this notice in accordance with sections 751(a)(1) and 777(I)(1) of the Act and 19 CFR 351.213(d).

Dated: September 2, 2004.

James J. Jochum,

Assistant Secretary for Import Administration

[FR Doc. 04–20462 Filed 9–8–04; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value and Amendment to the Scope: Wooden Bedroom Furniture From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 9, 2004.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4243 or 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Significant Ministerial Error

Pursuant to 19 CFR 351.224(g)(1) and (g)(2), the Department of Commerce (''Department'') is amending the amended preliminary determination of sales at less than fair value in the antidumping duty investigation of wooden bedroom furniture from the People's Republic of China (''PRC'') to reflect the correction of significant ministerial errors that it made with respect to the following Section A respondents: Billy Wood Industrial (Dong Guan) Co., Ltd. (''Billy Wood Industrial''), Great Union Industrial (Dong Guan) Co., Ltd. (''Great Union Industrial''), and Time Faith Limited (''Time Faith'') (collectively, ''Billy Wood''); Changshu HTC Import & Export Co., Ltd. (''HTC''); Dongguan Liaobushangdun Huada Furniture Factory and Great Rich (HK) Enterprise Company Limited (''Huada''); Zhanjiang Sunwin Arts & Crafts Co., Ltd. (''Sunwin''). Additionally, we are correcting the weighted-average rate assigned to certain Section A respondents that were granted a separate rate from 10.92 to 12.91 percent.

A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other

similar type of unintentional error which the Secretary considers ministerial. *See* 19 CFR 351.224(f). A significant ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa. *See* 19 CFR 351.224(g). We are publishing this amendment to the preliminary determination pursuant to 19 CFR 351.224(e).

Ministerial-Error Allegation

On August 5, 2004, the Department published an amended preliminary determination in this investigation.[1] The Department received a timely allegation of ministerial errors concerning the calculation of the weighted-average rate assigned to certain Section A respondents from petitioners.[2] In addition, Billy Wood, Huada, and Sunwin submitted timely allegations of ministerial error claiming that the Department overlooked evidence in their March 1, 2004, Section A responses that they were wholly foreign-owned enterprises and therefore qualified for separate rates. In addition, we have addressed HTC's June 29, 2004 allegation of ministerial errors, which we overlooked in the *Amended Preliminary Determination*. The Department has reviewed these allegations and agrees that some of the errors which the parties alleged are ministerial errors within the meaning of 19 CFR 351.224(f).[3] In addition, we have amended the all-others rate applicable to all Section A companies that we have determined are qualified for a separate rate.[4] Scope

For purposes of this investigation, the product covered is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,[5] highboys,[6] lowboys,[7] chests of drawers,[8] chests,[9] door chests,[10] chiffoniers,[11] hutches,[12] and armoires; [13] (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the Petition excludes: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate;[14] (9) jewelry armories;[15] and (10) cheval mirrors.[16]

Imports of subject merchandise are classified under statistical category 9403.50.9040 of the Harmonized Tariff Schedule of the United States (''HTSUS'') as ''wooden* * *beds'' and under statistical category 9403.50.9080 of the HTSUS as ''other* * *wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards

[1] *See Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China,* 69 FR 47417 (August 5, 2004) (''*Amended Preliminary Determination*'').

[2] The American Furniture Manufacturers Committee for Legal Trade and its individual members and the Cabinet Makers, Millmen, and Industrial Carpenters Local 721, UBC Southern Council of Industrial Worker's Local Union 2305, United Steel Workers of American Local 193U, Carpenters Industrial Union Local 2093, and Teamsters, Chauffeurs, Warehousemen and Helper Local 991 (collectively ''Petitioners'').

[3] *See* Memorandum to Laurie Parkhill, Office Director, *Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China: Analysis of Ministerial-Error Allegations for the Amended Preliminary Determination* dated August 31, 2004 (''*Amended Prelim Memo*'').

[4] *See Amended Prelim Memo.*

[5] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[6] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[7] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[8] A chest of drawers is typically a case containing drawers for storing clothing.

[9] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[10] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[11] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[12] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[13] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[14] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency, and then set by cooling or drying. *See* Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

[15] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24″ in width, 18″ in depth, and 49″ in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door lined with felt or felt-like material, with necklace hangers, and a flip-top lid with inset mirror. *See* Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, *Issues and Decision Memorandum Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China* dated August 31, 2004.

[16] Cheval mirrors, *i.e.*, any framed, tiltable mirror with a height in excess of 50″ that is mounted on a floor-standing, hinged base. *See Id.*

for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under statistical category 9403.50.9040 of the HTSUS as ''parts of wood'' and framed glass mirrors may also be entered under statistical category 7009.92.5000 of the HTSUS as ''glass mirrors* * *framed.'' This investigation covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Amended Preliminary Determination

As a result of our correction of ministerial errors in the *Preliminary Determination,* we have determined that the following weighted-average percentage dumping margins apply to imports of wooden bedroom furniture from the PRC:

Company	6/24/04 Prelim	8/5/04 Amendment	Amendment
Alexandre International Corp., or Southern Art Development Limited, or Alexandre Furniture (Shenzhen) Co., Ltd., or Southern Art Furniture Factory	.....	10.92	12.91
Art Heritage International, Ltd., or Super Art Furniture Co., Ltd., or Artwork Metal & Plastic Co., Ltd., or Jibson Industries, Ltd., or Always Loyal International	.....	10.92	12.91
Billy Wood Industrial (Dong Guan) Co., Ltd., or Great Union Industrial (Dongguan) Co., Ltd., or Time Faith Limited	.....	.....	12.91
Changshu HTC Import & Export Co., Ltd	.....	.....	12.91
Cheng Meng Furniture (PTE) Ltd., or China Cheng Meng Decoration & Furniture Co., Ltd	10.92	.....	12.91
Chuan Fa Furniture Factory	.....	10.92	12.91
Classic Furniture Global Co., Ltd	10.92	.....	12.91
Clearwise Company Limited	.....	10.92	12.91
COE, Ltd.	.....	10.92	12.91
Dalian Guangming Furniture Co., Ltd	10.92	.....	12.91
Dalian Huafeng Furniture Co., Ltd	10.92	.....	12.91
Dongguan Cambridge Furniture Co., or Glory Oceanic Company, Limited	10.92	.....	12.91
Dongguan Chunsan Wood Products Co., Ltd	.....	10.92	12.91
Dongguan Creation Furniture Co., Ltd., or Creation Industries Co., Ltd	10.92	.....	12.91
Dongguan Da Zhong Woodwork Co., Ltd	.....	10.92	12.91
Dongguan Grand Style Furniture, or Hong Kong Da Zhi Furniture (Grand Style Group)	10.92	.....	12.91
Dongguan Great Reputation Furniture Co., Ltd	10.92	.....	12.91
Dongguan Hero Way Woodwork Co., Ltd	.....	10.92	12.91
Dongguan Hung Sheng Artware Products Co., Ltd., or Coronal Enterprise Co., Ltd	10.92	.....	12.91
Dongguan Kin Feng Furniture Co., Ltd	10.92	.....	12.91
Dongguan Kingstone Furniture Co., Ltd., or Kingstone Furniture Co., Ltd	10.92	.....	12.91
Dongguan Liaobushangdun Huada Furniture Factory, or Great Rich (HK) Enterprise Company Limited	.....	.....	12.91
Dongguan Qingxi Xinyi Craft Furniture Factory (Joyce Art Factory)	10.92	.....	12.91
Dongguan Singways Furniture Co., Ltd	10.92	.....	12.91
Dongguan Sunrise Furniture Co., or Taicang Sunrise Wood Industry Co., Ltd., or Shanghai Sunrise Furniture Co., Ltd., or Fairmont Designs	.....	10.92	12.91
Dream Rooms Furniture (Shanghai) Co., Ltd	.....	10.92	12.91
Eurosa (Kunshan) Co., Ltd., or Eurosa Furniture Co., (PTE) Ltd. (Eurosa)	10.92	.....	12.91
Ever Spring Furniture Company Ltd., or S.Y.C. Family Enterprise Co., Ltd. (Everspring)	10.92	.....	12.91
Fine Furniture (Shanghai) Limited	10.92	.....	12.91
Foshan Guanqiu Furniture Co., Ltd	.....	10.92	12.91
Fujian Lianfu Forestry Co., Ltd., or Fujian Wonder Pacific Inc. (Fujian)	10.92	.....	12.91
Gaomi Yatai Wooden Ware Co., Ltd., or Team Prospect International Limited, or Money Gain International Co	.....	10.92	12.91
Garri Furniture (Dong Guan) Co., Ltd., or Molabile International, Inc., or Weei Geo Enterprise Co., Ltd	.....	10.92	12.91
Green River Wood (Dongguan) Ltd	.....	10.92	12.91
Guangming Group Wumahe Furniture Co., Ltd	10.92	.....	12.91
Hainan Jong Bao Lumber Co., Ltd., or Jibbon Enterprise Co., Ltd	10.92	.....	12.91
Hamilton & Spill Ltd	10.92	.....	12.91
Hang Hai Woodcraft's Art Factory	10.92	.....	12.91
Hualing Furniture (China) Co., Ltd., or Tony House Manufacture (China) Co., Ltd., or Buysell Investments Ltd., or Tony House Industries Co., Ltd	10.92	.....	12.91
Jardine Enterprise, Ltd	10.92	.....	12.91
Jiangsu Weifu Group Fullhouse Furniture Manufacturing. Corp	10.92	.....	12.91
Jiangsu Yuexing Furniture Group Co., Ltd	10.92	.....	12.91
Jiedong Lehouse Furniture Co., Ltd	10.92	.....	12.91
King's Way Furniture Industries Co., Ltd., or Kingsyear Ltd	10.92	.....	12.91
Kuan Lin Furniture (Dong Guan) Co., Ltd., or Kuan Lin Furniture Factory, or Kuan Lin Furniture Co., Ltd	.....	10.92	12.91
Kunshan Summit Furniture Co., Ltd	10.92	.....	12.91
Langfang Tiancheng Furniture Co., Ltd	10.92	.....	12.91
Leefu Wood (Dongguan) Co., Ltd., or King Rich International, Ltd	10.92	.....	12.91
Link Silver Ltd. (V.I.B.), or Forward Win Enterprises Company Limited, or Dongguan Haoshun Furniture Ltd	10.92	.....	12.91
Locke Furniture Factory (dba Kai Chan Furniture Co., Ltd.), or Kai Chan (Hong Kong) Enterprise Limited, or Taiwan Kai Chan Co., Ltd	10.92	.....	12.91
Longrange Furniture Co., Ltd	.....	10.92	12.91
Nantong Dongfang Orient Furniture Co., Ltd	10.92	.....	12.91

Company	6/24/04 Prelim	8/5/04 Amendment	Amendment
Nantong Yushi Furniture Co., Ltd	10.92	.....	12.91
Nathan International Ltd., or Nathan Rattan Factory	10.92	.....	12.91
Passwell Corporation, or Pleasant Wave Limited	.....	10.92	12.91
Perfect Line Furniture Co., Ltd	10.92	.....	12.91
Prime Wood International Co., Ltd., or Prime Best International Co., Ltd., or Prime Best Factory, or Liang Huang (Jiaxing) Enterprise Co., Ltd	.....	10.92	12.91
Qingdao Liangmu Co., Ltd	10.92	.....	12.91
Restonic (Dongguan) Furniture Ltd., or Restonic Far East (Samoa) Ltd	10.92	.....	12.91
RiZhao SanMu Woodworking Co., Ltd	10.92	.....	12.91
Season Furniture Manufacturing Co., or Season Industrial Development Co. (Season Group)	10.92	.....	12.91
Sen Yeong International Co., Ltd., or Sheh Hau International Trading Ltd	10.92	.....	12.91
Shanghai Aosen Furniture Co., Ltd	10.92	.....	12.91
Shanghai Maoji Imp and Exp Co., Ltd	10.92	.....	12.91
Sheng Jing Wood Products (Beijing) Co., Ltd., or Telstar Enterprises Ltd	10.92	.....	12.91
Shenyang Shining Dongxing Furniture Co., Ltd	10.92	.....	12.91
Shenzhen Forest Furniture Co., Ltd	10.92	.....	12.91
Shenzhen Jiafa High Grade Furniture Co., Ltd., or Golden Lion International Trading Ltd	10.92	.....	12.91
Shenzhen New Fudu Furniture Co., Ltd	10.92	.....	12.91
Shenzhen Wonderful Furniture Co., Ltd	10.92	.....	12.91
Shenzhen Xiande Furniture Factory	.....	10.92	12.91
Shenzhen Xingli Furniture Co., Ltd	10.92	.....	12.91
Shun Feng Furniture Co., Ltd	10.92	.....	12.91
Songgang Jasonwood Furniture Factory, or Jasonwood Industrial Co., Ltd. S.A	10.92	.....	12.91
Starwood Furniture Manufacturing Co. Ltd	10.92	.....	12.91
Starwood Industries Ltd	10.92	.....	12.91
Strongson Furniture (Shenzhen) Co., Ltd., or Strongson Furniture Co., Ltd., or Strongson (HK) Co	10.92	.....	12.91
Sunforce Furniture (Hui-Yang) Co., Ltd., or Sun Fung Wooden Factory, or Sun Fung Company, or Shin Feng Furniture Co., Ltd., or Stupendous International Co., Ltd. (Sunforce)	10.92	.....	12.91
Tarzan Furniture Industries Ltd. & Samso Industries Ltd	10.92	.....	12.91
Teamway Furniture (Dong Guan) Ltd. & Brittomart Inc	10.92	.....	12.91
Techniwood Industries Limited	10.92	.....	12.91
Tianjin Fortune Furniture Co., Ltd	10.92	.....	12.91
Tianjin Master Home Furniture	.....	10.92	12.91
Tianjin Phu Shing Woodwork Enterprise Co., Ltd	10.92	.....	12.91
Tianjin Sande Fairwood Furniture Co., Ltd	10.92	.....	12.91
Tube-Smith Enterprise (ZhangZhou) Co., Ltd., or Tube-Smith Enterprise (Haimen) Co., Ltd., or Billonworth Enterprises Ltd	10.92	.....	12.91
Union Friend International Trade Co., Ltd	10.92	.....	12.91
U-Rich Furniture (Zhangzhou) Co., Ltd., or U-Rich Furniture Ltd	10.92	.....	12.91
Wanhengtong Nueevder (Furniture) Manufacture Co., Ltd., or Dongguan Wanengtong Industry Co., Ltd	10.92	.....	12.91
Woodworth Wooden Industries (Dong Guan) Co., Ltd	10.92	.....	12.91
Xiamen Yongquan Sci-Tech Development Co., Ltd	10.92	.....	12.91
Jiangsu XiangSheng Bedtime Furniture Co., Ltd	10.92	.....	12.91
Xingli Arts & Crafts Factory of Yangchun	10.92	.....	12.91
Yangchun Hengli Company Limited	10.92	.....	12.91
Yeh Brothers World Trade, Inc	10.92	.....	12.91
Yichun Guangming Furniture Co., Ltd	10.92	.....	12.91
Yida Co., Ltd., or Yitai Worldwide, Ltd., or Yili Co., Ltd., or Yetbuild Co., Ltd	.....	10.92	12.91
Yihua Timber Industry Co., Ltd	10.92	.....	12.91
Zhang Zhou Sanlong Wood Product Co., Ltd	10.92	.....	12.91
Zhangjiagang Zheng Yan Decoration Co., Ltd	10.92	.....	12.91
Zhangzhou Guohui Industrial & Trade Co. Ltd	10.92	.....	12.91
Zhanjiang Sunwin Arts & Crafts Co., Ltd	.....	.....	12.91
Zhong Shan Fullwin Furniture Co., Ltd	10.92	.....	12.91
Zhongshan Fookyik Furniture Co., Ltd	10.92	.....	12.91
Zhongshan Golden King Furniture Industrial Co., Ltd	10.92	.....	12.91
Zhoushan For-Strong Wood Co., Ltd	10.92	.....	12.91

The collection of bonds or cash deposits and suspension of liquidation will be revised accordingly in accordance with section 733(d) of the Tariff Act of 1930, as amended (''the Act'').

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (''ITC'') of our amended preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of the preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

This determination is issued and published in accordance with sections

733(f) and 777(I)(1) of the Act and 19 CFR 351.224(e).

Dated: September 2, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–20464 Filed 9–8–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–829]

Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil; Extension of Final Results of Expedited Sunset Review of the Suspended Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Final Results of Expedited Sunset Review of the Suspended Countervailing Duty Investigation: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for its final results in the expedited sunset review of the suspended countervailing duty (''CVD'') investigation on certain hot-rolled flat-rolled carbon-quality steel products (''hot-rolled steel'') from Brazil. Based on adequate responses from the domestic interested parties and inadequate responses from respondent interested parties (in this case, no response), the Department is conducting expedited sunset review to determine whether revocation of the suspended CVD investigation would lead to the continuation or recurrence of a countervailing subsidy. As a result of this extension, the Department intends to issue final results of this sunset review on or about October 15, 2004.

EFFECTIVE DATE: September 9, 2004.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler, Esq., Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4340.

Extension of Final Results

In accordance with section 751(c)(5)(C)(ii) of the Tariff Act of 1930, as amended (''the Act''), the Department may treat sunset reviews as extraordinarily complicated if the issues are complex in order to extend the period of time under section 751(c)(5)(B) of the Act for making a sunset determination. As discussed below, the Department has determined that these issues are extraordinarily complicated. On May 1, 2004, the Department initiated sunset review of the suspended CVD investigation on hot-rolled steel from Brazil. *See Initiation of Five-Year (Sunset) Reviews*, 69 FR 24118 (May 1, 2004). The Department, in this proceeding, determined that it would conduct an expedited sunset review of this suspended CVD investigation based on responses from the domestic interested parties and no responses from the respondent interested parties to the notice of initiation. The Department's final results of this review was scheduled for August 31, 2004; however, the Department needs additional time for its analysis to analyze the issues raised by the parties.

Because of the complex issues in these proceedings, the Department will extend the deadline for issuance of the final results. Thus, the Department intends to issue the final results on or about October 15, 2004 in accordance with sections 751(c)(5)(B) and (C)(ii) of the Act.

Dated: August 31, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4–2102 Filed 9–8–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

The Manufacturing Council: Meeting of The Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Manufacturing Council will hold a full Council meeting to discuss topics related to the state of manufacturing. The Manufacturing Council is a Secretarial Board at the Department of Commerce, established by Secretary Donald L. Evans to ensure regular communication between Government and the manufacturing sector. This will be the second meeting of The Manufacturing Council and will include updates by the Council's three subcommittees. For further information, please visit the Manufacturing Council Web site at: *http://www.manufacturing.gov/council.htm*.

DATES: September 21, 2004.

Time: 1:30 p.m.

ADDRESSES: Bidwell Training Center, 1815 Metropolitan Street, Pittsburgh, Pennsylvania. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted no later than September 15, 2004, to The Manufacturing Council, Room 4043, Washington, DC 20230. Seating is limited and will be on a first come, first served basis.

FOR FURTHER INFORMATION CONTACT: The Manufacturing Council Executive Secretariat, Room 4043, Washington, DC 20230 (Phone: 202–482–1369).

Dated: September 3, 2004.

Sam Giller,

Executive Secretary, The Manufacturing Council.

[FR Doc. 04–20495 Filed 9–8–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090204E]

Endangered and Threatened Species: Notice of Public Hearings on Proposed Hatchery Listing Policy

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

ACTION: Notice of public hearings.

SUMMARY: In June 2004, NMFS proposed a new policy for the consideration of hatchery salmon (chum, *Oncorhynchus keta*; coho, *O. kisutch*, sockeye, *O. nerka*; chinook, *O. tshawytscha*;) and *O. mykiss* (inclusive of anadromous steelhead and resident rainbow trout) in Endangered Species Act (ESA) listing determinations. NMFS recently extended the public comment period for this proposed new policy to October 20, 2004, and also announced a series of public hearings in the Pacific Northwest. In this notice, NMFS is announcing that public hearings will also be held at six locations in California from late September through mid-October to provide additional opportunities for the public and other interested parties to comment on the proposed policy.

DATES: Written comments must be received by October 20, 2004. See **SUPPLEMENTARY INFORMATION** for the specific public hearing dates.

ADDRESSES: You may submit comments on the proposed hatchery listing policy (69 FR 31354; June 3, 2004) by any of the following methods:

E-mail: The mailbox address for submitting e-mail comments on the hatchery listing policy is *hatch.policy@noaa.gov*. Please include in the subject line of the e-mail comment the document identifier ''Hatchery Listing Policy.''

Mail: Submit written comments and information to Assistant Regional Administrator, NMFS, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, California, 90802–4213. Please identify the comment as regarding the ''Hatchery Listing Policy.''

Fax: 562–980–4027. Please identify the fax comment as regarding the ''Hatchery Listing Policy.''

Copies of the **Federal Register** notices cited herein and additional salmon-related materials are available on the Internet at *http://www.nwr.noaa.gov*.

See **SUPPLEMENTARY INFORMATION** for hearing locations.

FOR FURTHER INFORMATION CONTACT: Craig Wingert, NMFS, Southwest Region, (562) 980–4021.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 2004, NMFS published a proposed policy addressing the role of hatchery produced Pacific salmon and *O. mykiss* in ESA listing determinations (69 FR 31354; ''proposed hatchery listing policy''). The proposed hatchery listing policy would supersede NMFS' 1993 Interim Policy on salmonid artificial (hatchery) propagation (58 FR 17573; April 5, 1993), which requires revision following the 2001 U.S. District Court ruling in *Alsea Valley Alliance* v. *Evans* (161 F. Supp. 2d 1154, D. Oreg. 2001;appeal dismissed, 358 F.3d 1181 (9th Cir. 2004); Alsea ruling). The *Alsea* ruling held that NMFS had made an improper distinction under the ESA by not listing certain artificially propagated salmon populations determined to be part of the same ESU as listed natural populations. Under the proposed hatchery listing policy: hatchery fish with a level of genetic divergence relative to local natural populations that is no more than would be expected between closely related populations within the ESU would be included as part of the ESU; within-ESU hatchery fish would be considered in determining whether the ESU should be listed under the ESA; and within-ESU hatchery fish would be included in any listing of the ESU. NMFS applied this proposed policy in conducting its comprehensive review of ESA listing status for 26 previously listed ESUs, and one candidate ESU, of West Coast salmon and O. mykiss.

Extension of Public Comment Period

Several requests were received to extend the comment period for the proposed hatchery listing policy . The original comment period for the new policy was September 1, 2004, but has recently been extended to October 20, 2004 (69 FR 53039) to allow additional opportunity for public comment (see **DATES** and **ADDRESSES**).

Public Hearings

Joint Commerce-Interior ESA implementing regulations state that the Secretary shall promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed regulation to list a species or to designate critical habitat (see 50 CFR 424.16(c)(3)). In order to provide the public an opportunity to provide public comments on the new hatchery listing proposal, NMFS will be holding six public hearings in California at the specific dates and locations listed below:

(1) September 22, 2004; 6:30–9:30pm at the North Coast Inn, 4975 Valley West Blvd., Arcata, CA 95521

(2) September 23, 2004; 6:30–9:30pm at the DoubleTree Hotel Sonoma Wine Country, One DoubleTree Drive, Rohnert Park, CA 94928

(3) September 28, 2004; 6:30–9:30pm at the Best Western Hilltop Inn, 2300 Hilltop Drive, Redding, CA 96002

(4) September 28, 2004; 6:30–9:30pm at the Monterey Beach Resort, 2600 Sand Dunes Drive, Monterey, CA 93940

(5) October 12, 2004; 6:30–9:30pm at the Radisson Hotel Sacramento, 500 Leisure Lane, Sacramento, CA 95815

(6) October, 12, 2004; 6:30–9:30pm at the Fess Parker's DoubleTree Resort, 633 East Cabrillo Blvd., Santa Barbara, CA 93103

NMFS has scheduled these hearings to allow affected stakeholders and members of the public the opportunity to provide comments directly to agency staff during the comment period. However, these public meetings are not the only opportunity for the public to provide input on this proposal. The public and stakeholders are encouraged to continue to comment and provide input to NMFS on the proposals (via correspondence, e-mail, and the Internet; see **ADDRESSES**, above) up until the scheduled close of the comment period on October 20, 2004.

References

Copies of the **Federal Register** notices and related materials cited herein are available on the Internet at *http://nwr.noaa.gov*, or upon request (see **ADDRESSES** section above).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: September 3, 2004.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–20424 Filed 9–3–04; 2:55 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083104J]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Trawl Survey Advisory Panel, composed of representatives from the Northeast Fisheries Science Center (NEFSC), the Mid-Atlantic Fishery Management Council (MAFMC), the New England Fishery Management Council (NEFMC), and several independent scientific researchers, will hold a public meeting.

DATES: The meeting will be held on Wednesday, September 29th, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Marriott Courtyard, 32 Exchange Terrace, Providence, RI; telephone: 401–272–1191.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review the final preparations for the October NEFSC's experimental trawl survey and to organize the Panel's presentation for the next days workshop at FishExpo.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues

arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Debbie Donnangelo at the Mid-Atlantic Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: September 3, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–2131 Filed 9–8–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083104G]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Trawl Individual Quota Enforcement Group (TIQ Enforcement Group) will hold a working meeting which is open to the public.

DATES: The TIQ Enforcement Group working meeting will begin Tuesday, September 28, 2004 at 8:30 a.m. and may go into the evening if necessary to complete business for the day.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, West Conference Room, Portland, OR 97220–1384; telephone: 503–820–2280.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Staff Officer (Economist); telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the TIQ Enforcement Group meeting is to: (1) review enforcement program alternatives developed at its previous meeting in the light of comments received during the recently completed National Environmental Policy Act scoping period and (2) to work on developing a general assessment of the costs for status quo enforcement and levels of enforcement that might be required for different individual quota enforcement programs.

Although non-emergency issues not contained in the TIQ Enforcement Group meeting agenda may come before the group for discussion, those issues may not be the subject of formal group action during these meetings. TIQ Enforcement Group final action will be restricted to those issues specifically listed in this notice and to any issues arising after publication of this notice requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the group's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: September 3, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–2130 Filed 9–8–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083104I]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a one day meeting of its Pelagics Plan Team (PPT) in Honolulu, HI to discuss fishery issues and develop recommendations for future management.

DATES: The meeting of the PPT will be held on September 29, 2004 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Council Office Conference Room, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813; telephone: 808–522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The PPT will meet at 8.30 a.m. on September 29, 2004, at the Council Conference Room to discuss the following agenda items:

1. Introduction
2. Stock assessments for yellowfin and bigeye tunas from the 17th Standing Committee on Tuna and Billfish
3. Fishery management options for Pacific bigeye and yellowfin tunas
4. Importation of cold-smoke (Carbon monoxide)-treated tuna to Hawaii
5. Jointly coordinated fishing experiments between Japan and Hawaii-based to test sea turtle and seabird mitigation measures.
6. Other business

The order in which the agenda items are addressed may change. The PPT will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before the PPT for discussion, those issues may not be the subject of formal action during these meetings. Plan Team action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: September 3, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–2129 Filed 9–8–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090204A]

Endangered Species; File No. 1418

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

ACTION: Receipt of application for modification

SUMMARY: Notice is hereby given that Lawrence D. Wood, Marine Life Center of Juno Beach, 14200 U.S. Hwy. ı1, Juno Beach, FL 33408, has requested a modification to scientific research Permit No. 1418.

DATES: Written, telefaxed, or e-mail comments must be received on or before October 12, 2004.

ADDRESSES: The modification request 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 request should be submitted 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 modification 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. 1418.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 1418, issued on January 14, 2004 (69 FR 2118) is requested under the authority of the Endangered Species Act of 1973, as amended (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).

Permit No. 1418 authorizes the permit holder to study the abundance and distribution of hawksbill (*Eretmochelys imbricata*) sea turtles in the waters of Palm Beach County, FL. The purpose of this project is to support hawksbill recovery efforts by surveying the local population to document the distribution and movement of individuals in these waters. The permit holder requests authorization to blood sample each of the 75 hawksbill sea turtles already authorized to be captured. The blood samples will allow researchers to determine the sex of the turtles in order to more accurately characterize the population.

Dated: September 3, 2004.

Amy C. Sloan,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–20470 Filed 9–8–04; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') has submitted a public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Bruce Kellogg, at (202) 606–5000, extension 526. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (800) 833–3722 between the hours of 9 a.m. and 5 p.m. eastern standard time, Monday through Friday.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Brenda Aguilar, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316, within 30 days from the date of publication in this **Federal Register**.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose 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 submissions of responses.

An ICR document has been submitted to OMB for consideration concerning a proposed revision to an earlier OMB-approved form. It is The Voucher and Payment Request Form (OMB #3045–0014).

This is the document by which an AmeriCorps member accesses his or her account in the National Service Trust. The form serves three purposes: (1) The AmeriCorps member uses it to request and authorize a specific payment to be made from his or her account, (2) the school or loan company uses it to indicate the amount for which the individual is eligible, and (3) the school or loan company and member both certify that the payment meets various legislative requirements. When the Corporation receives a voucher, it is processed and the U.S. Treasury issues a payment to the loan holder or school on behalf of the AmeriCorps member.

The document was published in the **Federal Register** on June 8, 2004, for a 60-day pre-clearance public comment period. A caller commented on unclear wording, which has been modified. Only one organization, a school, requested a copy of the document. Its suggestion was incorporated into the version now being presented to OMB for consideration. The form is discussed below.

Voucher and Payment Request Form

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Voucher and Payment Request Form.

OMB Number: OMB #3045–0014.

Agency Number: None.

Affected Public: Individuals who have completed a term of national service and who wish to access their educational award accounts.

Total Respondents: 69,000 annually (estimated annual average over the next 3 years).

Frequency: Experience has shown that some members may not ever use the

education award and others use it several times a year.

Average Time Per Response: Total of 5 minutes (one half minute for the AmeriCorps member's section and 4½ minutes for the school or lender).

Estimated Total Burden Hours: 5,750 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description

After completing a period of national and community service, the AmeriCorps member receives an education award that can be used to pay against qualified student loans or pay for current post secondary educational expenses. The Voucher and Payment Request Form is the document that a member uses to access his or her account in the National Service Trust.

The form serves three purposes: (1) The AmeriCorps member uses it to request and authorize a specific payment to be made from his or her account, (2) the school or loan company uses it to indicate the amount for which the individual is eligible, and (3) the school or loan company and member both certify that the payment meets various legislative requirements. When the Corporation receives a voucher, it is processed and the U.S. Treasury issues a payment to the loan holder or school on behalf of the AmeriCorps member.

The form was first designed and some variation of it has been in use since the summer of 1994. We are proposing revisions to clarify certain sections of the existing form and to include terminology included in recent legislative changes. The changes impose no additional burden. The legislated change in terminology modifies the definition of loans ''made directly to the student. * * *'' to loans ''made, insured, or guaranteed directly to the student. * * *''

Modifications to Section A clarify instructions to the member on filling out that portion of the Voucher, especially the dollar amount the member requests and authorizes, and includes space to indicate the disbursement period. Similarly, modifications to Section B clarify information provided to loan holders and educational institutions, particularly in regard to stating the dollar amount for educational expenses.

The Corporation seeks to continue using this particular form, albeit in a revised version. The current form is due to expire 09/2004.

Analysis of Comments Received During the Public Comment Period

One comment was received from an educational institution. It suggested the member indicate the disbursement period for the requested payment on the form so that the school would not need to contact the student for that information. Another person commented on the reference to ''an eligible program'', which he found unclear. Both comments were incorporated into the revised form.

Dated: August 30, 2004.

Ruben Wiley,

Manager, National Service Trust.

[FR Doc. 04–20386 Filed 9–8–04; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Contract Financing: Performance-Based Payments

AGENCY: Department of Defense (DoD).

ACTION: Request for public comments.

SUMMARY: The Director of Defense Procurement and Acquisition Policy (DPAP) is currently conducting an internal assessment regarding the use of performance-based payments as a method of financing for DoD contracts. As part of this assessment, DPAP would like to hear the views of interested parties on what they believe are potential areas for improving DoD's use of performance-based payments.

DATES: Submit written comments to the address shown below on or before October 25, 2004.

ADDRESSES: Submit comments to: Office of the Director, Defense Procurement and Acquisition Policy, Policy Directorate, ATTN: Mr. David Capitano, Room 3C838, 3000 Defense Pentagon, Washington, DC 20301–3000. Comments may also be submitted by fax at (703) 614–0719 (ATTN: Mr. David Capitano), or by e-mail at *david.capitano@osd.mil*.

FOR FURTHER INFORMATION CONTACT: Mr. David Capitano, DPAP Policy Directorate, by telephone at (703) 847–7486, or by e-mail at *david.capitano@osd.mil*.

SUPPLEMENTARY INFORMATION:

Government policy is that performance-based payments are the preferred form of contract financing. In furtherance of this policy, the Director of Defense Procurement and Acquisition Policy is soliciting public input regarding actions (policy changes, training, etc.) DoD should undertake to—

1. Increase the use of performance-based payments as the method of contract financing on DoD contracts (*e.g.*, what should be done to increase the number of contracts that utilize performance-based payments); and

2. Improve the efficiency of performance-based payments when used on DoD contracts (*e.g.*, what should be done to improve the use of performance-based payments on those contracts that provide for such contract financing).

It would be helpful, but not required, if respondents could also provide—

1. A brief summary of their experience in using performance-based payments on DoD contracts; and

2. What they believe to be the most important advantages and disadvantages that performance-based payments have with respect to progress payments.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 04–20398 Filed 9–8–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0255]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Construction and Architect-Engineer Contracts

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through

October 31, 2004. DoD proposes that OMB extend its approval for use through October 31, 2007.

DATES: DoD will consider all comments received by November 8, 2004.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0255, using any of the following methods:

• Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.

• E-mail: *dfars@osd.mil.* Include OMB Control Number 0704–0255 in the subject line of the message.

• Fax: Primary: (703) 602–7887; Alternate: (703) 602–0350.

• Mail: Defense Acquisition Regulations Council, Attn: Mr. Euclides Barrera, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

• Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, (703) 602–0296. The information collection requirements addressed in this notice are available electronically on the Internet at: *http://www.acq.osd.mil/dpap/dfars/index.htm.*

Paper copies are available from Mr. Euclides Barrera, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 236, Construction and Architect-Engineer Contracts, and Related Clauses at DFARS 252.236; OMB Control Number 0704–0255.

Needs and Uses: DoD contracting officers need this information to evaluate contractor proposals for contract modifications; to determine that a contractor has removed obstructions to navigation; to review contractor requests for payment for mobilization and preparatory work; to determine reasonableness of costs allocated to mobilization and demobilization; and to determine eligibility for the 20 percent evaluation preference for United States firms in the award of some overseas construction contracts.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 318,295.

Number of Respondents: 3,117.

Responses Per Respondent: Approximately 1.

Annual Responses: 3,152.

Average Burden Per Response: 100.98 hours.

Frequency: On occasion.

Summary of Information Collection

DFARS 236.570(a) prescribes use of the clause at DFARS 252.236–7000, Modification Proposals-Price Breakdown, in all fixed-price construction contracts. The clause requires the contractor to submit a price breakdown with any proposal for a contract modification.

DFARS 236.570(b) prescribes use of the following clauses in fixed-price construction contracts as applicable:

(1) The clause at DFARS 252.236–7002, Obstruction of Navigable Waterways, requires the contractor to notify the contracting officer of obstructions in navigable waterways.

(2) The clause at DFARS 252.236–7003, Payment for Mobilization and Preparatory Work, requires the contractor to provide supporting documentation when submitting requests for payment for mobilization and preparatory work.

(3) The clause at DFARS 252.236–7004, Payment for Mobilization and Demobilization, permits the contracting officer to require the contractor to furnish cost data justifying the percentage of the cost split between mobilization and demobilization, if the contracting officer believes that the proposed percentages do not bear a reasonable relation to the cost of the work.

DFARS 236.570(c) prescribes use of the following provisions in solicitations for military construction contracts that are funded with military construction appropriations and are estimated to exceed $1,000,000:

(1) The provision at DFARS 252.236–7010, Overseas Military Construction-Preference for United States Firms, requires an offeror to specify whether or not it is a United States firm.

(2) The provision at DFARS 252.236–7012, Military Construction on Kwajalein Atoll-Evaluation Preference, requires an offeror to specify whether it is a United States firm, a Marshallese firm, or other firm.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 04–20399 Filed 9–8–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE Formerly Known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2005 Mental Health Rate Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of updated mental health per diem rates.

SUMMARY: This notice provides for the updating of hospital-specific per diem rates for high volume providers and regional per diem rates for low volume providers; the updated cap per diem for high volume providers; the beneficiary per diem cost-share amount for low volume providers for FY 2005 under the TRICARE Mental Health Per Diem Payment System; and the updated per diem rates for both full-day and half-day TRICARE Partial Hospitalization Programs for fiscal year 2005.

DATES: The fiscal year 2005 rates contained in this notice are effective for services occurring on or after October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Christine Gavlick, Office of Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3841.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on September 6, 1988, (53 FR 34285) set forth reimbursement changes that were effective for all inpatient hospital admissions in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. The final rule published in the **Federal Register** on July 1, 1993, (58 FR 35–400) set forth maximum per diem rates for all partial hospitalization admissions on or after September 29, 1993. Included in these final rules were provisions for updating reimbursement rates for each Federal fiscal year. As stated in the final rules, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System. For fiscal year 2005, Medicare has recommended a rate of increase of 3.3 percent for hospitals and units excluded from the prospective payment system. TRICARE will adopt this update factor for FY 2005 as the final update factor. Hospitals and units with hospital-specific rates (hospitals and units with high TRICARE volume) and regional specific rates for psychiatric hospitals and units with low TRICARE volume will have their TRICARE rates for FY 2004 updated by 3.3 percent for FY

2005. Partial hospitalization rates for full day and half day programs will also be updated by 3.3 percent for FY 2005. The cap amount for high volume hospitals and units will also be updated by the 3.3 percent for FY 2005. The beneficiary cost-share for low volume hospitals and units will also be updated by the 3.3 percent for FY 2005. Consistent with Medicare, the wage portion of the regional rate subject to the area wage adjustment is 71.56 percent for FY 2005.

The following reflect an update of 3.3 percent for FY 2005.

Regional Specific Rates for Psychiatric Hospitals and Units with Low Tricare Volume

United States census region	Rate@
Northeast:	
New England	$638
Mid-Atlantic	614
Midwest:	
East North Central	530
West North Central	500
South:	
South Atlantic	632
East South Central	685
West South Central	576
West:	
Mountain	575
Pacific	679
@Wage portion of the rate, subject to the area wage adjustment	71.56%

Beneficiary Cost-Share: Beneficiary cost-share (other than dependents of active duty members) for care paid on the basis of a regional per diem rate is the lower of $169 per day or 25 percent of the hospital billed charges effective for services rendered on or after October 1, 2004.

Cap Amount: Updated cap amount for hospitals and units with high TRICARE volume is $802 per day for FY 2005.

The following reflect an update of 3.3 percent for FY 2005.

Partial Hospitalization Rates for Full-Day and Half-Day Programs FY 2005

United States census region	Full-day rate (6 hours or more)	Half-day rate (3–5 hours)
Northeast:		
New England (ME, NH, VT, MA, RI, CT)	$256	$192
Mid-Atlantic (NY, NJ, PA)	277	208
Midwest:		
East North Central (OH, IN, IL, MI, WI)	244	183
West North Central (MN, IA, MO, ND, SD, NE, KS)	244	183
South:		
South Atlantic (DE, MD, DC, VA, WV, NC, SC, GA, FL)	263	197
East South Central (KY, TN, AL, MS)	284	213
West South Central (AR, LA, TX, OK)	284	213
West:		
Mountain (MT, ID, WY, CO, NM, AZ, UT, NV)	287	216
Pacific (WA, OR, CA, AK, HI)	281	211

The above rates are effective for services rendered on or after October 1, 2004.

Dated: September 2, 2004.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 04–20365 Filed 9–8–04; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0001]

Federal Acquisition Regulation; Information Collection; Standard Form 28, Affidavit of Individual Surety

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0001).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Standard Form 28, Affidavit of Individual Surety. The clearance currently expires on October 31, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 8, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0001, Standard Form 28, Affidavit of Individual Surety, in all correspondence.

FOR FURTHER INFORMATION CONTACT Cecelia Davis, Contract Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Affidavit of Individual Surety (Standard Form (SF) 28) is used by all executive agencies, including the Department of Defense, to obtain information from individuals wishing to serve as sureties to Government bonds. To qualify as a surety on a Government bond, the individual must show a net worth not less than the penal amount of the bond on the SF 28. It is an elective decision on the part of the maker to use individual sureties instead of other available sources of surety or sureties for Government bonds. We are not aware if other formats exist for the collection of this information.

The information on SF 28 is used to assist the contracting officer in determining the acceptability of individuals proposed as sureties.

B. Annual Reporting Burden

Respondents: 500.
Responses Per Respondent: 1.43.
Total Responses: 715.
Hours Per Response: .4.
Total Burden Hours: 286.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (V), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0001, Standard Form 28, Affidavit of Individual Surety, in all correspondence.

Dated: August 30, 2004.

Ralph J. De Stefano

Director, Contract Policy Division.

[FR Doc. 04–20395 Filed 9–8–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0022]

Federal Acquisition Regulation; Information Collection; Duty-Free Entry

AGENCIES: Department of Defense (DOD), General ServicesAdministration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0022).

SUMMARY: Under the provisions of the Paperwork ReductionAct of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning customs and duties. The clearance currently expires on October 31, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 8, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (V), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0022, Duty-Free Entry, in all correspondence.

FOR FURTHER INFORMATION CONTACT Cecelia Davis, Contract Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

United States laws impose duties on foreign supplies imported into the customs territory of the United States. Certain exemptions from these duties are available to Government agencies. These exemptions are used whenever the anticipated savings outweigh the administrative costs associated with processing required documentation. When a Government contractor purchases foreign supplies, it must notify the contracting officer to determine whether the supplies should be duty-free. In addition, all shipping documents and containers must specify certain information to assure the duty-free entry of the supplies.

The contracting officer analyzes the information submitted by the contractor to determine whether or not supplies should enter the country duty-free. The information, the contracting officer's determination, and the U.S. Customs forms are placed in the contract file.

B. Annual Reporting Burden

Respondents: 1,330.
Responses Per Respondent: 10.
Total Responses: 13,300.
Hours Per Response: .5.
Total Burden Hours: 6,650.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (V), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0022, Duty-Free Entry, in all correspondence.

Dated: August 30, 2004

Ralph J. De Stefano

Acting Director, Contract Policy Division.

[FR Doc. 04–20396 Filed 9–8–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0113]

Federal Acquisition Regulation;Information Collection; Acquisition of Helium

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0113).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning acquisition of helium. The clearance currently expires on October 31, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 8, 2004.

ADDRESSES: Submit comments regarding this burden or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VR), 1800 F Street, NW,Room 4035, Washington, DC 20405. Please cite OMB Control No.9000–0113, Acquisition of Helium, in all correspondence.

FOR FURTHER INFORMATION CONTACT Linda Nelson, Contract Policy Division, GSA (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Helium Act (Pub. L. 86–777) (50 U.S.C. 167a, *et seq.*) and the Department of the Interior's implementing regulations (30 CFR parts 601 and 602) require Federal agencies to procure all major helium requirements from the Bureau of Land Management, Department of the Interior.

The FAR requires offerors responding to contract solicitations to provide information as to their forecast of helium required for performance of the contract. Such information will facilitate enforcement of the requirements of the Helium Act and the contractual provisions requiring the use of Government helium by agency contractors, in that it will permit corrective action to be taken if the Bureau of Land Management, after comparing helium sales data against helium requirement forecasts, discovers apparent serious discrepancies.

The information is used in administration of certain Federal contracts to ensure contractor compliance with contract clauses. Without the information, the required use of Government helium cannot be monitored and enforced effectively.

B. Annual Reporting Burden

Respondents: 26.
Responses Per Respondent: 1.
Total Responses: 26.
Hours Per Response: 1.
Total Burden Hours: 26.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VR), Room 4035, 1800 F Street, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0113, Acquisition of Helium, in all correspondence.

Dated: August 30, 2004

Ralph J. De Stefano

Acting Director, Contract Policy Division.

[FR Doc. 04–20397 Filed 9–8–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Metrix Services, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Metrix Services, Inc., a revocable, nonassignable, exclusive license to practice in the United States and certain foreign countries, the Government-owned invention described in U.S. Patent No. 5,511,122 entitled ''Intermediate Network Authentication'', Navy Case No. 74,836.

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 24, 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: September 2, 2004.

J.H. Wagshul,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 04–20401 Filed 9–8–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–505–000]

ANR Pipeline Company; Notice of Tariff Filing

September 1, 2004.

Take notice that on August 27, 2004, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 190A, to become effective on September 1, 2004.

ANR states that the purpose of this filing is to seek approval for a non-conforming service agreement between ANR and Centra Gas Manitoba, Inc., which allows ANR to make deliveries to Great Lakes Gas Transmission Limited Partnership (Great Lakes) at several of ANR's interconnection points with Great Lakes.

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. E4–2114 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–129]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate

September 1, 2004.

Take notice that on August 30, 2004, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to be effective August 1, 2004:

First Revised Sheet No. 885
First Revised Sheet No. 887

CEGT states that the tariff sheets contain agreements between CEGT and Oneok Energy Marketing and Trading Company, L.P. with respect to a substitute index price for two negotiated rate contracts, due to Platt's discontinuation of publication of the Oklahoma West index price in its Gas Daily price surveys.

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. E4–2112 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–128]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate

September 1, 2004.

Take notice that on August 27, 2004, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 866, to be effective August 1, 2004.

CEGT states that the tariff sheet contains an agreement between CEGT and Dynegy Marketing and Trade with respect to a substitute index price for a negotiated rate contract, due to Platt's discontinuation of publication of the Oklahoma CEGT West index price in its Gas Daily price surveys.

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. E4–2118 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–399–000]

Columbia Gas Transmission Corporation; Notice of Application

August 31, 2004.

Take notice that Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP04–399–000 on August 19, 2004, an application pursuant to section 7(b) of the Natural Gas Act (NGA), to abandon two compressor stations, the Abbeyville and Zane Compressor Stations, including compression and appurtenant facilities, located in Medina and Muskingum Counties, Ohio, 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, call toll free (866) 208–3676 or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to Fredric J. George, Senior Attorney, at (304) 357–2359 (telephone) or (304) 357–3206 (fax).

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.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: 5 p.m. eastern standard time on September 21, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2121 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–008]

Dauphin Island Gathering Partners; Notice of Negotiated Rate

September 1, 2004.

Take notice that on August 30, 2004, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below to become effective September 29, 2004:

Eighteenth Revised Sheet No. 9
Fifteenth Revised Sheet No. 10
Third Revised Sheet No. 359
Second Revised Sheet No. 427

Dauphin Island states that these tariff sheets reflect changes to maximum daily quantities (MDQ's), shipper names, the addition of four shippers, and the termination of two contracts on the negotiated rate and nonconforming tariff sheets.

Dauphin Island states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding and on all persons who are required by the Commission's regulations to be served with the application initiating these proceedings.

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. E4–2119 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.CP04–397–000]

El Paso Natural Gas Company; Notice of Application

August 31, 2004.

Take notice that El Paso Natural Gas Company (El Paso), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP04–397–000 on August 17, 2004, an application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, to abandon pipeline facilities consisting of suction and discharge piping on El Paso's Line 2000 at the Florida Compressor Station in Luna County, New Mexico, 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, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Robert T. Tomlinson, Director, Regulatory Affairs, at (719) 520–3788 (telephone) or (719) 520–4318 (fax).

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.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: 5 p.m. eastern standard time on September 21, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2127 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–020]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Negotiated Rate

September 2, 2004.

Take notice that on August 31, 2004, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, the following tariff sheets, to be effective September 1, 2004:

Second Revised Sheet No. 4G.01
Second Revised Sheet No. 4K
First Revised Sheet No. 4L
First Revised Sheet No. 4M

KMIGT states that the above-referenced tariff sheets reflect a negotiated rate contract effective September 1, 2004. The tariff sheets are being filed pursuant to section 36 of KMIGT's FERC Gas Tariff Fourth Revised Volume No. 1–B, and the procedures prescribed by the Commission in its December 31, 1996 ''Order Accepting Tariff Filing Subject to Conditions'' in Docket No. RP97–81 (77 FERC ¶ 61,350) and the Commission's Letter Orders dated March 28, 1997 and November 30, 2000 in Docket Nos. RP97–81–001 and RP01–70–000.

KMIGT states that the above-referenced tariff sheets reflect a negotiated rate contract effective September 1, 2004. KMIGT explains that the tariff sheets are being filed pursuant to section 36 of KMIGT's FERC Gas Tariff Fourth Revised Volume No. 1–B, and the procedures prescribed by the Commission in its December 31, 1996 ''Order Accepting Tariff Filing Subject to Conditions'' in Docket No. RP97–81 (77 FERC ¶ 61,350), and the Commission's Letter Orders dated March 28, 1997 and November 30, 2000 in Docket Nos. RP97–81–001 and RP01–70–000.

KMIGT states that a copy of this filing has been served upon all parties to this proceeding, KMIGT's customers and affected 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 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2134 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–262–006]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

August 31, 2004.

Take notice that on August 26, 2004, Natural Gas Pipeline Company of America (Natural) submitted a tariff sheet correcting a pagination error in its compliance filing made with the Commission's on August 24, 2004.

Natural states that copies of its filing were served on parties on the official service list.

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 Section 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2125 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–507–000]

North Baja Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

September 1, 2004.

Take notice that on August 27, 2004, North Baja Pipeline, LLC (NBP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective September 27, 2004:

Second Revised Sheet No. 123
Second Revised Sheet No. 124
First Revised Sheet No. 125

NBP states that these tariff sheets are being submitted to clarify NBP's right of first refusal tariff provisions of its tariff.

NBP further states that a copy of this filing has been served on NBP's jurisdictional customers and interested state regulatory agencies.

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. E4–2115 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–404–014]

Northern Natural Gas Company; Notice of Tariff Filing

August 31, 2004.

Take notice that on August 26, 2004, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to implement segmentation on Northern's system:

24 Revised Sheet No. 59
Eighth Revised Sheet No. 59A
27 Revised Sheet No. 60
17 Revised Sheet No. 61
17 Revised Sheet No. 62
17 Revised Sheet No. 63
Fourth Revised Sheet No. 256
Third Revised Sheet No. 305A
Second Revised Sheet No. 403
Second Revised Sheet No. 406
Original Sheet No. 406A
Second Revised Sheet No. 408
Original Sheet No. 408A
Second Revised Sheet No. 409
Original Sheet No. 409A

Northern states that it is submitting the following tariff sheets to clarify the information segmentation shippers must provide to Northern under a segmentation agreement and to provide the applicable commodity and mainline fuel rates at MID 7B on Northern's rate tariff sheets.

Northern further states that copies of the filing have been mailed to each of its 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 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. E4–2124 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–509–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 1, 2004.

Take notice that on August 27, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective October 1, 2004:

Seventh Revised Sheet No. 19–A
Sixth Revised Sheet No. 20
Fifth Revised Sheet No. 21
Second Revised Sheet No. 21–A
Seventh Revised Sheet No. 275
Second Revised Sheet No. 302–C

Northwest states that the purpose of this filing is to enhance customer options for acquiring available capacity from Northwest by revising Northwest's tariff to: (1) Allow pre-arranged service agreements for available capacity for primary service terms of thirty-one days or less to be subject to a minimum competing bid period of only one hour; and (2) allow the existing load factor based discounted reservation rate under Rate Schedule TF–1 to include a minimum average load factor provision for billing purposes.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory 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 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, N.E., 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. E4–2116 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–517–000]

Petal Gas Storage L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

September 1, 2004.

Take notice that on August 30, 2004, Petal Gas Storage L.L.C., tendered for

filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective October 1, 2004:

Second Revised Sheet No. 4A
Second Revised Sheet No. 13
Third Revised Sheet No. 53
Second Revised Sheet No. 62
First Revised Sheet No. 78
First Revised Sheet No. 88

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. E4–2117 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–404–000]

Tennessee Gas Pipeline Company; Notice of Abbreviated Application for Authorization To Abandon Service and To Amend Certificate of Public Convenience and Necessity

August 31, 2004.

Take notice that on August 24, 2004, Tennessee Gas Pipeline Company (Tennessee), filed an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA), 15 U.S.C. 717f(b) and 717f(c), and Part 157 of the Commission's Regulations, as amended, and the Regulations of the Federal Energy Regulatory Commission, requesting that the Commission: (1) Grant Tennessee authorization to abandon the section 7(c) firm natural gas transportation service that Tennessee provides to Dominion Transmission Inc., (Dominion), formerly CNG Transmission Corporation, pursuant to a permanently assigned Firm Natural Gas Transportation between Tennessee and Cogen Energy Technology, LP, Tennessee's Rate Schedule NET and the Certificate Order; and (2) permit TransCanada Power (Castleton) LLC, to assume Dominion's service entitlements under a new Firm Natural Gas Transportation Agreement pursuant to Tennessee's Rate Schedule NET.

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.

Comment Date: 5 p.m. eastern standard time on September 16, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2122 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–503–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 1, 2004.

Take notice that on August 26, 2004, Viking Gas Transmission Company (Viking) tendered for filing to become part of Viking's FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 87I, to become effective September 24, 2004.

Viking is requesting that the Commission accept certain nonconforming firm transportation agreements which contain language in Article(s) 10.1 and 10.2 that is different from the form of agreement currently contained in its tariff. Viking further states that it is submitting a non-conforming released transportation agreement which contains special terms which are not included in the form of agreement contained in Viking's 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2113 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–499–000]

Williston Basin Interstate Pipeline Company; Notice of Annual Report of Penalty Revenue Credits

August 31, 2004.

Take notice that on August 25, 2004, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing its ''Annual Report of Penalty Revenue Credits'' covering such activity during the twelve month period ended June 30, 2003.

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 date as indicated below. 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.

Intervention and Protest Date: 5 p.m. eastern standard time on September 8, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2126 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–28–014]

Wyoming Interstate Company, Ltd.; Notice of Negotated Rate

August 31, 2004.

Take notice that on August 25, 2004, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No 2, Third Revised Sheet No. 114, to become effective October 1, 2004.

WIC states that this tariff sheet implements one new negotiated rate transaction related to its Echo Springs Project.

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. E4–2120 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–90–001]

Wyoming Interstate Company, Ltd.; Notice of Compliance Filing

August 31, 2004.

Take notice that on August 25, 2004, Wyoming Interstate Company, Ltd. (WIC) submitted a compliance filing pursuant the Commission's order issued May 11, 2004 at Docket No. CP04–90–000. WIC states that the filing

implements the pro forma tariff sheets previously filed in this proceeding related to the Echo Springs Project.

WIC states that copies of its filing have been sent to all parties of record in this proceeding and affected 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 385.214). 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. Such protests must be filed on or before the comment date. Anyone filing a protest must serve a copy of that document on all parties to this proceeding.

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.

Comment Date: 5 p.m. eastern standard time on September 16, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2123 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG04–98–000, et al.]

Tyr Energy, LLC, *et al.*; Electric Rate and Corporate Filings

August 31, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Tyr Energy, LLC

[Docket No. EG04–98–000]

Take notice that on August 25, 2004, Tyr Energy, LLC (Tyr) filed with the Commission an application for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935 (PUHCA) and Part 365 of the Commission's regulations.

Tyr states that it is a Delaware limited liability company that will be engaged either directly or indirectly and exclusively in the business of operating electric generation facilities located in Massachusetts.

Comment Date: 5 p.m. eastern standard time on September 15, 2004.

2. ENMAX Energy Marketing, Inc.

[Docket No. ER01–2508–001]

Take notice that on August 26, 2004, ENMAX Energy Marketing, Inc. (ENMAX) submitted for filing its triennial market power update analysis. ENMAX also submitted for filing amendments to its market-based rate tariff implementing the Market Behavior Rules adopted by the Commission, *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorization*, 105 FERC ¶ 61,218 (2003).

Comment Date: 5 p.m. eastern standard time on September 16, 2004.

3. Reliant Energy Aurora, LP

[Docket No. ER04–1066–002]

Take notice that on August 25, 2004, Reliant Energy Wholesale Generation, LLC (REWG) submitted a substitute rate sheet to its rate schedule filed July 30, 2004. REWG states that the substitute rate sheet intended to supersede Original Sheet No. 1 of Rate Schedule No. 2 filed on August 24, 2004, contained a minor clerical error relating to the issuance date and this filing is to correct the substitute rate sheet.

Comment Date: 5 p.m. eastern standard time on September 14, 2004.

4. NewCorp Resources Electric Cooperative, Inc.

[Docket No. ER04–1149–000]

Take notice that on August 25, 2004, NewCorp Resources Electric Cooperative, Inc. (NewCorp) tended for filing its Network Integration Transmission Service Agreement with Cap Rock Energy Corporation (NITSA) and its Network Operating Agreement with Cap Rock Energy Corporation (NOA). NewCorp states that this filing is being made pursuant to Part 25 of the Commission's regulations implementing section 205 of the Federal Power Act.

NewCorp request waiver of the notice and effective date requirements of Part 35 to allow the NITSA and NOA to take effect as of April 1, 2004.

Comment Date: 5 p.m. eastern standard time on September 14, 2004.

5. Westar Energy, Inc.

[Docket No. ER04–1150–000]

Take notice that on August 26, 2004, Westar Energy, Inc. (Westar) submitted for filing revisions to the FERC Electric Tariff, Volume No. 7 (Tariff) for approval. Westar states that the tariff is proposed to be effective on October 1, 2004 and the changes in the tariff provide for customers taking service under the tariff to obtain an allocation of hydroelectric power and energy from an additional resource, the Western Area Power Administration (WAPA). Westar notes that the changes also delete Westar's need to submit a revised Exhibit II when delivery points are added or changed. Westar further states that it has also corrected typographical errors.

Westar states that a copy of this filing was served upon the Kansas Corporation Commission, Kaw Valley Electric Cooperative, Nemaha-Marshall Electric Cooperative Association, Inc. and Doniphan Electric Cooperative.

Comment Date: 5 p.m. eastern standard time on September 16, 2004.

6. Xcel Energy Operating Companies; Northern States Power Company d/b/a Xcel Energy

[Docket No. ER04–1151–000]

Take notice that on August 26, 2004, Xcel Energy Services Inc. (XES) on behalf of Northern States Power Company d/b/a Xcel Energy (NSP) filed a Connection and Construction Agreement for the Wood Lake Substation 69 kV Connection between NSP and the Minnesota Valley Cooperative Light and Power Association (MVCLP) dated August 16, 2004. XES states that it proposes that the Interconnection Agreement be designated as Service Agreement 219–NSP to the Xcel Energy Operating Companies FERC Electric Tariff, Original Volume No. 3. XES requests that the Interconnection Agreement be accepted for filing effective August 9, 2004.

Comment Date: 5 p.m. eastern standard time on September 16, 2004.

7. Ameren Services Company

[Docket No. ER04–1152–000]

Take notice that on August 26, 2004, Ameren Services Company (Ameren), on behalf of Union Electric Company d/b/a AmerenUE and Central Illinois

Public Service Company d/b/a AmerenCIPS, submitted notices of cancellation for service agreements under the Open Access Transmission System Tariff (OATT) of the Ameren Operating Companies. Ameren states that on May 1, 2004, it transferred functional control of the Ameren Operating Companies' transmission system to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the Midwest ISO now provides transmission service under the Midwest ISO OATT, using the transmission facilities of Ameren and others.

Ameren states that it has served a copy of the complete filing on the Missouri Public Service Commission and the Illinois Commerce Commission. Ameren further states that it has served a copy of the transmittal letter and Attachment A (listing all service agreements to be cancelled) on all affected customers and will provide a complete copy of the filing to any such customer upon request. Finally, Ameren states that it has arranged for the electronic posting of the filing on the Midwest ISO's website at www.midwestiso.org under the heading ''Filings to FERC.''

Comment Date: 5 p.m. eastern standard time on September 16, 2004.

8. CAM Energy Trading LLC

[Docket No. ER04–1153–000]

Take notice that on August 26, 2004, CAM Energy Trading LLC tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting CAM Energy Trading LLC's FERC Electric Rate Schedule No. 1. CAM Energy Trading LLC states that it is seeking authority to make sales of electrical capacity, energy, ancillary services, and firm transmission rights, congestion credits, fixed transmission rights, and auction revenue rights (collectively, FTRs), as well as reassignments of transmission capacity, to wholesale customers at market-based rates. CAM Energy Trading LLC requests waiver of the 60-day prior notice requirement to permit the Rate Schedule to be effective August 21, 2004, and requests expeditious Commission approval of this Application.

Comment Date: 5 p.m. eastern standard time on September 16, 2004.

9. Southern California Edison Company

[Docket No. ER04–1154–000]

Take notice that on August 26, 2004, Southern California Edison Company (SCE) submitted for filing a Letter Agreement (Agreement) between SCE and the Blythe Energy, LLC (Blythe Energy), Service Agreement No. 29 under FERC Electric Tariff, Second Revised Volume No. 6. SCE states that the purpose of the agreement is for SCE to install equipment to sense overload conditions on the Blythe-Eagle Mountain 161kV transmission line to facilitate the curtailment of power from Blythe Energy's 520MW generating project.

SCE states that copies of the filing were served upon the Public Utilities Commission of the State of California and Blythe Energy.

Comment Date: 5 p.m. eastern standard time on September 16, 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. E4–2128 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2460–002, et al.]

PSEG Lawrenceburg Energy Company LLC, et al.; Electric Rate and Corporate Filings

September 1, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PSEG Lawrenceburg Energy Company LLC and PSEG Waterford Energy LLC

[Docket Nos. ER01–2460–002 and ER01–2482–002]

Take notice that on August 30, 2004, PSEG Lawrenceburg Energy Company LLC (PSEG Lawrenceburg) and PSEG Waterford Energy LLC (PSEG Waterford) (collectively, the Applicants) submitted a compliance filing pursuant to the Commissions, orders in PSEG Lawrenceburg Energy Company LLC, Docket No. ER01–2460–000 (Letter Order issued August 16, 2001) and PSEG Waterford Energy LLC, Docket No. ER01–2482–000 (Letter Order issued August 23, 2001), and pursuant to Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC & 61,218 (2003). Applicants state that the compliance filing consists of an updated market power analysis and updated tariff sheets.

PSEG Lawrenceburg and PSEG Waterford state 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 September 20, 2004.

2. Southern Company Services, Inc.

[Docket No. ER04–563–003]

Take notice that, on August 30, 2004, Southern Company Services, Inc. acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies), submitted a compliance filing, under protest, pursuant to the

order of the Federal Energy Regulatory Commission dated July 29, 2004, in Docket No. ER04–563–000.

Southern Companies state 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 September 20, 2004.

3. Tampa Electric Company

[Docket No. ER04–1156–000]

Take notice that on August 30, 2004, Tampa Electric Company (Tampa Electric) tendered for filing a notice of cancellation of the service agreement with Southern Company Services, Inc. (Southern) under Tampa Electric's Market-Based Sales Tariff. Tampa Electric proposes that the cancellation be made effective on October 11, 2004.

Tampa Electric states that copies of the filing have been served on Southern and the Florida Public Service Commission.

Comment Date: 5 p.m. eastern time on September 20, 2004.

4. New England Power Company

[Docket No. ER04–1158–000]

Take notice that on August 30, 2004, New England Power Company (NEP) submitted for filing a Third Revised Service Agreement No. 6 between NEP and its affiliate, Granite State Electric Company (Granite State), under NEP's FERC Electric Tariff, Original Volume No. 1 (Tariff No. 1). NEP and Granite State state that they are amending Service Agreement No. 6 to reflect the resolution of all issues associated with NEP's Reconciliation Reports for the years 2001, 2002, and 2003 governing Granite State's contract termination charges under Tariff No. 1.

NEP states that copies of this filing have been served on Granite State, the NHPUC and the New Hampshire Office of Consumer Advocate.

Comment Date: 5 p.m. eastern time on September 20, 2004.

5. Southern California Edison Company

[Docket No. ER04–1159–000]

Take notice that on August 30, 2004, Southern California Edison Company (SCE) submitted for filing changes to the facilities charges under agreements with numerous entities.

SCE states that each of the agreements provides that the monthly charge to recover the revenue requirement for the facilities at issue is based on the rate most recently adopted by the California Public Utilities Commission (CPUC) for application to SCE's retail electric customers for added facilities. SCE states that the purpose of this filing is to reflect in the agreements the revised rates for added facilities applicable to retail customers adopted in CPUC Decision 04–07–022 which are effective for service rendered on and after July 18, 2004.

SCE states that copies of the filing were served upon the Public Utilities Commission of the State of California and each affected jurisdictional customer.

Comment Date: 5 p.m. eastern time on September 20, 2004.

6. Midwest Independent Transmission System Operator, Inc., American Transmission Company, LLC

[Docket No. ER04–1160–000]

Take notice that on August 30, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and American Transmission Company, LLC (ATCLLC) tendered for filing revisions to the Midwest ISO Open Access Transmission Tariff to revise the limitation of liability provisions. Applicants request an effective date of October 30, 2004.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region and in addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO states it will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. eastern time on September 20, 2004.

7. Southern Company Services, Inc.

[Docket No. ER04–1161–000]

Take notice that on August 24, 2004, Southern Company Services, Inc. (SCS), on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively Southern Companies), submitted a filing under section 205 of the Federal Power Act to propose revisions to Attachment J to the Southern Companies open access transmission tariff (FERC Electric Tariff, Fourth Revised Volume No. 5).

SCS states that a copy of this filing is posted on Southern Companies' OASIS for download by any person and upon request, Southern Companies will provide a copy of this filing to any such person.

Comment Date: 5 p.m. eastern time on September 14, 2004.

8. United States Department of Energy, Bonneville Power Administration

[Docket No. NJ04–5–000]

Take notice that on August 27, 2004, the Bonneville Power Administration submitted an unexecuted transmission service agreement with Westward Energy, LLC, with a request that the Commission find that the terms of the service agreement are just and reasonable and consistent with or superior to the requirements of Order No. 888, and permit such service agreement to go into effect as of September 1, 2004.

Comment Date: 5 p.m. eastern time on September 17, 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. E4–2133 Filed 9–8–04; 8:45 am]

BILLING CODE 6717–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Notice of Release of Draft Strategic Plan for U.S. Integrated Earth Observation System; Request for Public Comment

ACTION: Notice of release of Draft Strategic Plan for U.S. Integrated Earth Observation System and request for public comment.

SUMMARY: This notice announces the release of the Draft Strategic Plan for the U.S. Integrated Earth Observation System and Request for Public Comment by the National Science and Technology Council's Committee on Environment and Natural Resources (CENR) Interagency Working Group on Earth Observations (IWGEO). This draft plan was prepared to address the effective use of Earth observation systems to benefit humankind.

DATES: The Draft Strategic Plan will be available for public review on Wednesday, September 8, 2004, and can be accessed electronically at *http://iwgeo.ssc.nasa.gov/draftstrategicplan.* Comments on the Draft Strategic Plan must be received by the Interagency Working Group on Earth Observations no later that the close of business on Monday, November 8, 2004 (60 days).

Address for Comments: Only electronic (e-mail) comments will be accepted, and should be sent to: *IWGEOcomments@noaa.gov.*

FOR FURTHER INFORMATION, CONTACT: CENR Interagency Working Group on Earth Observations, Carla Sullivan, Executive Secretary, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Room 5810, Washington, DC 20230, telephone: (202) 482–5921, e-mail: *Carla.Sullivan@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Interagency Working Group on Earth Observations (IWGEO) of the NSTC Committee on Environment and Natural Resources was established after the Earth Observation Summit for a two-fold purpose:

(1) To develop and begin implementation of the U.S. framework and ten-year plan for an integrated, comprehensive Earth observation system to answer environmental and societal needs, including a U.S. assessment of current observational capabilities, evaluation of requirements to sustain and evolve these capabilities considering both remote and in situ instruments, assessment of how to integrate current observational capabilities across scales, and evaluation and addressing of data gaps; and

(2) To formulate the U.S. position and input to the international ad hoc Group on Earth Observations (GEO) as formed at the Earth Observation Summit on July 31, 2003.

In response to the first goal, the IWGEO has prepared a Draft Strategic Plan for the U.S. Integrated Earth Observation System. The draft was prepared after a year of coordination among the over 15 agencies represented. In addition, a public workshop was held on June 16–17, 2004, for the purpose of allowing representatives of the communities-of-practice to contribute information and facts on the nine societal benefits areas, which provide the focus of the plan. These strategic social/economic areas include the following:

1. Improve Weather Forecasting;
2. Reducing Loss of Life and Property From Disasters;
3. Protecting and Monitoring Ocean Resources;
4. Understanding Climate, and Assessing, Mitigating, and Adapting to Climate Change Impacts;
5. Supporting Sustainable Agriculture and Forestry, and Combating Land Degradation;
6. Understanding the Effect of Environmental Factors on Human Health and Well-Being;
7. Developing the Capacity To Make Ecological Forecasts;
8. Protecting and Monitoring Water Resources; and
9. Monitoring and Managing Energy Resources.

Associated Technical Reports referenced as Appendix 3 of the Draft Strategic Plan for the U.S. Integrated Earth Observation System are currently being updated based on comments received at the June IWGEO public meeting. When completed, these Technical Reports, along with additional background information may be found at *http://iwgeo.ssc.nasa.gov/documents.asp?s=review,* or by contacting the IWGEO Secretariat office: Carla Sullivan, Interagency Working Group on Earth Observations (IWGEO), National Oceanic and Atmospheric Administration (NOAA), 1401 Constitution Avenue, NW., Washington, DC 20230. Telephone: (202) 482–5921, telefax: (202) 408–9674. E-mail: *Carla.Sullivan@noaa.gov.* Subject: Draft Strategic Plan for U.S. Integrated Earth Observation System.

The National Science and Technology Council (NSTC) was established by Executive Order 12881. The Committee on Environment and Natural Resources (CENR) is chartered as one of four standing committees of the NSTC for the purpose of advising and assisting the Council on those federally supported efforts that develop new knowledge related to improving our understanding of the environment and natural resources.

Ann F. Mazur,

Assistant Director for Budget and Administration.

[FR Doc. 04–20485 Filed 9–8–04; 8:45 am]

BILLING CODE 3170–WF–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank

indicated or the offices of the Board of Governors not later than October 1, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Algiers Bancorp, Inc., Baton Rouge, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Statewide Bank, Terrytown, Louisiana (formerly known as Algiers Bank & Trust).

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Banks, Inc., St. Louis, Missouri; and its subsidiary The San Francisco Company, San Francisco, California; to acquire 100 percent of the voting shares of Hillside Investors, Ltd., Hillside, Illinois, and thereby indirectly acquire voting shares of CIB Bank, Hillside, Illinois.

Board of Governors of the Federal Reserve System, September 2, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–20368 Filed 9–8–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 042 3016]

Bonzi Software, Inc., et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 1, 2004.

ADDRESSES: Comments should refer to ''Bonzi Software, Inc., *et al.*, File No. 042 3016,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Pahl or Laura Sullivan, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2128 or 326–3327.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 1, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/09/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before October 1, 2004. Comments should refer to ''Bonzi Software, Inc., *et al.*, File No. 042 3016,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Bonzi Software, Inc., Joe Bonzi, and Jay Bonzi (''respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves the advertising and promotion of Bonzi InternetALERT software. According to the FTC complaint, the respondents represented that Internet ALERT significantly reduces the risk of unauthorized access into computers and the data stored in them. The FTC alleges that in fact InternetALERT does not significantly reduce this risk.

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

The proposed consent order contains provisions designed to prevent the respondents from engaging in similar acts and practices in the future.

Part I.A. of the order prohibits the respondents from misrepresenting the extent to which InternetALERT or any other software product or service that is marketed as enhancing security will reduce the risk of unauthorized access into a computer. Part I.B. also prohibits the respondents from misrepresenting the extent which any such product or service will maintain, protect, or provide security features that will enhance the security or privacy of any computer, or any data that is stored in a computer, including personally identifiable information.

Part II prohibits the respondents from making any misrepresentations concerning the performance, benefits, or efficacy of any computer software product or service that is marketed as enhancing security or privacy.

Part III of the order requires respondents to pay refunds to current InternetALERT subscribers who opt to cancel their subscriptions. Subscribers who cancel their subscriptions will receive from the respondents a refund that represents the unused portion of their InternetALERT subscription.

Part IV of the proposed order would require respondents to notify their retailers, affiliates, and similar third parties that advertise, promote, or sell InternetALERT to discontinue making any of the claims prohibited by the order.

Parts V though IX of the order require respondents to keep copies of relevant advertisements and materials substantiating the claims made in the advertisements; to provide copies of the order to certain of their current and future personnel; to notify the Commission of changes in corporate structure; and to file compliance reports with the Commission. Part X provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–20405 Filed 9–8–04; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

OMB Control No. 3090–0118

Federal Management Regulation and Federal Property Management Regulations; Information Collection; Standard Form 94, Statement of Witness

AGENCY: Federal Vehicle Policy Division, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding Standard Form (SF) 94, Statement of Witness.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: November 8, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Moses, Team Leader, Federal Vehicle Policy Division, at (202) 501-2507 or via e-mail to mike.moses@gsa.gov.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (V), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090-0118, Standard Form 94, Statement of Witness, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

SF 94 is used by all Federal agencies to report accident information involving U.S. Government motor vehicles. The SF 94 is an essential part of the investigation of motor vehicle accidents, especially those involving the public with a potential for claims against the United States. It is a vital piece of information in lawsuits and provides the Assistant United States Attorneys with a written statement to refresh recollection of accidents, as necessary. The SF 94 is usually completed at the time of an accident involving a motor vehicle owned or leased by the Government. Individuals, other than the vehicle operator, who witness the accident, complete the form.Use of the SF 94 is prescribed in FMR 102-34.300(b) and Federal Property Management Regulations 101-39.40(b).

B. Annual Reporting Burden

Respondents: 874
Responses Per Respondent: 1
Hours Per Response: 20 minutes
Total Burden Hours: 291
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (V), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090-0118, Standard Form 94, Statement of Witness, in all correspondence.

Dated: August 31, 2004

Michael W. Carleton,

Chief Information Officer.

[FR Doc. 04–20378 Filed 9–8–04; 8:45 am]

BILLING CODE 6820–14–S

GENERAL SERVICES ADMINISTRATION

Federal Management Regulation; Publication of Electronic Copy

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: GSA announces the reissue of the Federal Management Regulation (FMR) in an improved electronic version. The FMR is available in HTML and PDF versions and will replace the paper copy of the FMR looseleaf.

FOR FURTHER INFORMATION CONTACT: Michael Hopkins, Office of Transportation and Personal Property, General Services Administration, Washington, DC 20405, (202) 208–4421, michael.hopkins@gsa.gov.

SUPPLEMENTARY INFORMATION: The Federal Management Regulation (FMR) is contained in Title 41, chapter 102, of the Code of Federal Regulations (41 CFR chapter 102). The FMR implements statutory requirements and Executive branch policies for managing personal and real property, transportation, and administrative programs such as mail management.

This reissue contains a revised format but does not include new policy

changes. Electronic versions of the FMR will be located at www.gsa.gov (then search for ''FMR & FMR Library''). Discontinuance of the hard copy FMR looseleaf edition will take place immediately.

Dated: September 1, 2004

G. Martin Wagner,

Associate Administrator.

[FR Doc. 04–20377 Filed 9–8–04; 8:45 am]

BILLING CODE 6820–14–S

GENERAL SERVICES ADMINISTRATION

Office of Governmentwide Policy

Governmentwide Relocation Advisory Board

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) is announcing the public meetings of the Governmentwide Relocation Advisory Board for 2004. The Board will offer advice and recommendations on a wide range of relocation management issues. The Board's first priority will be to review the current policies promulgated through the Federal Travel Regulation (FTR) for relocation allowances and associated reimbursements. Board meetings for 2005 will be announced in the **Federal Register** at a later date.

Government Relocation Advisory Board Meetings scheduled for 2004:

September 29, 2004

Location: Sheraton Crystal City Hotel, Ballroom C, 1800 Jefferson Davis Highway, Arlington, VA, 22202.

Time: 11 a.m. to 3:30 p.m. (eastern time). (A public-accessible teleconference line will be available for the entire meeting.)

October 20, 2004

Location: Hyatt Regency Hotel Crystal City, Potomac Rooms 3 and 4, 2799 Jefferson Davis Highway, Arlington, VA, 22202.

Time: 9 a.m. to 4 p.m. (eastern time). (A public-accessible teleconference line will be available for the entire meeting.)

December 1, 2004

Location: Hyatt Regency Hotel Crystal City, Potomac Rooms 3 and 4, 2799 Jefferson Davis Highway, Arlington, VA, 22202.

Time: 9 a.m. to 4 p.m. (eastern time). (A public-accessible teleconference line will be available for the entire meeting.)

FOR FURTHER INFORMATION CONTACT: Joan Bender, Designated Federal Officer (DFO), General Services Administration, 1800 F Street NW, Room 1221, Washington, DC 20405, via phone at (202) 208–4462; email at *joan.bender@gsa.gov*; or fax at (202) 501–0349, for further information, including teleconference call-in numbers and access codes, and information on submitting written or brief oral comments that is not mentioned below. General information concerning the Relocation Advisory Board can be obtained on the GSA Web site: *www.gsa.gov/travelpolicy*.

Providing Oral or Written Comments at Board Meetings: GSA will accept written comments of any length, and accommodate oral public comments whenever possible. Public comments may be made at the October 20 or December 1 meeting. GSA expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation will be limited to a total time of ten minutes (unless otherwise indicated). Requests to provide oral comments must be in writing (e-mail, fax or mail) and received by Ms. Bender no later than noon eastern time five business days prior to the meeting in order to reserve time on the meeting agenda. Speakers should bring at least 75 copies of their comments and presentation slides for distribution to the Board and the public at the meeting.

Written Comments: Although the GSA accepts written comments until the date of the meeting, written comments should be received by Ms. Bender no later than noon eastern time five business days prior to the meeting so that the comments may be provided to the Board for their consideration prior to the meeting. Comments should be provided to Ms. Bender at the address noted previously as follows: one hard copy with original signature, and one electronic copy via e-mail in a Word, WordPerfect, or Adobe Acrobat PDF file. Those providing written comments are also asked to bring 75 copies of the comments to the meeting.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), and advises of the public meetings for the GSA Governmentwide Relocation Advisory Board. The Administrator of General Services has determined that the establishment of the Board is necessary and in the public interest.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference rooms, should contact the DFO at the phone number or e-mail address noted above at least 10 days prior to the meeting so that appropriate arrangements can be made.

Dated: August 31, 2004.

Becky Rhodes,

Deputy Associate Administrator.

[FR Doc. 04–20349 Filed 9–8–04; 8:45 am]

BILLING CODE 6820–14–S

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will meet from Sunday, October 17, 2004, through Wednesday, October 20, 2004, in Washington, DC. The sessions will take place from 1 p.m. to 5 p.m. on Sunday, October 17; from 8:30 a.m. to 5 p.m. on Monday and Tuesday, October 18 and 19; and from 8 a.m. to 12 noon on Wednesday, October 20. The meeting will be held at the Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public. The meetings will take place concurrently with the Federal Depository Library Conference. There is no charge for the conference; however, all participants should register for the Council Meeting at: *http://www.access.gpo.gov/su_docs/fdlp/tools/04conreg.html.*

A limited number of sleeping rooms are available at the Hyatt Regency Washington on Capitol Hill. Single rooms are available at the Government rate of $145 (plus tax) per night. Double rooms are also available for $170 (plus tax) per night. These rates will be honored only through September 16, 2004. The District of Columbia's room tax is 14.5%. Reservations are accepted online at: *http://washingtonregency.hyatt.com/groupbooking/uspo.* Reservations can also be made by calling (800) 235–1234 or contacting the hotel at (202) 737–1234. To receive these rates you must mention that you are attending GPO's Federal Depository Library Conference and Council Meeting. The hotel offers daily, overnight and valet parking. The maximum daily parking rate is $30 per day. The Hyatt Regency Washington on Capitol Hill is in compliance with the requirements of Title III of the

Americans With Disabilities Act and meets all Fire Safety Act regulations.

James C. Bradley,

Acting Public Printer.

[FR Doc. 04–20400 Filed 9–8–04; 8:45 am]

BILLING CODE 1520–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–04KC]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call (404) 498–1210 or send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

EPI–AID Recommendations for Effective Control and Prevention—New—Epidemiology Program Office (EPO), Centers for Disease Control and Prevention (CDC).

Background & Brief Description:

CDC is requesting a 3-year approval to collect data from epidemiologic aid investigations. The purpose of this data collection is to assess the number and proportion of Epidemic AID (EPI–AID) investigations that provide practical recommendations for effective control and prevention. The EPI–AID mechanism is a means for Epidemic Intelligence Service (EIS) officers of the Centers for Disease Control and Prevention (CDC), along with other CDC staff, to provide technical support to state health agencies requesting assistance for epidemiologic field investigations (disease outbreaks or health emergencies).

Currently, Epi Trip Reports are delivered to the state health agency official requesting assistance shortly after completion of the EPI–AID investigation. This official can comment on both the timeliness and the practical utility of the recommendations from the investigation. Upon completion of the EPI–AID investigation, requesting officials at the state or local health department will be asked to complete a brief questionnaire to assess the promptness of the investigation and the usefulness of the recommendations.

This data collection methodology will improve the EPI–AID mechanism which allows CDC to respond rapidly to public health problems in need of urgent attention, thereby providing an important service to state and other public health agencies; and to provide supervised training opportunities for EIS officers (and, sometimes, other CDC trainees) to actively participate in epidemiologic investigations. There are no costs to respondents.

ANNUALIZED BURDEN TABLE

Respondents	No. of espondents	Number of esponses per respondent	Average urden per esponse in hrs.)	Total burden hours
EPI–AID Requests	100	1	10/60	17
Total	100			17

Dated: August 30, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–20409 Filed 9–8–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Adopting and Demonstrating the Adaptation of Prevention Techniques (ADAPT), Supplement to Program Announcement Number 04064

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Adopting and Demonstrating the Adaptation of Prevention Techniques (ADAPT), Supplement to Program Announcement Number 04064.

Times and Dates: 5 p.m.–7 p.m., September 24, 2004 (Open); 7 p.m.–9 p.m., September 24, 2004 (Closed); 9 a.m.–9 p.m., September 25, 2004 (Closed); 9 a.m.–9 p.m., September 26, 2004 (Closed).

Place: Westin Hotel at Perimeter, 7 Concourse Parkway, Atlanta, GA 30328, Telephone (770) 395–3900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in

response to Supplement to Program Announcement Number 04064.

Contact Person For More Information: Jennifer Galbraith, Behavioral Scientist, CDC, National Center for HIV, STD, and TB Prevention, Division of HIV/AIDS Prevention Intervention Research and Support, Prevention Research Branch, 1600 Clifton Road, NE, MS–E37, Atlanta, GA 30333, Telephone (404) 639–8649.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 1, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–20417 Filed 9–8–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8021–N]

RIN 0938–AN16

Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 2005

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year 2005 under Medicare's Hospital Insurance program (Medicare Part A). The Medicare statute specifies the formulae used to determine these amounts.

The inpatient hospital deductible will be $912. The daily coinsurance amounts will be: (a) $228 for the 61st through 90th day of hospitalization in a benefit period; (b) $456 for lifetime reserve days; and (c) $114 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

DATES: This notice is effective on January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390. For case-mix analysis only: Gregory J. Savord, (410) 786–1521.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires us to determine and publish, between September 1 and September 15 of each year, the amount of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts applicable for services furnished in the following calendar year.

II. Computing the Inpatient Hospital Deductible for 2005

Section 1813(b) of the Act prescribes the method for computing the amount of the inpatient hospital deductible. The inpatient hospital deductible is an amount equal to the inpatient hospital deductible for the preceding calendar year, changed by our best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1886(b)(3)(B) of the Act) used for updating the payment rates to hospitals for discharges in the fiscal year that begins on October 1 of the same preceding calendar year, and adjusted to reflect real case mix. The adjustment to reflect real case mix is determined on the basis of the most recent case mix data available. The amount determined under this formula is rounded to the nearest multiple of $4 (or, if midway between two multiples of $4, to the next higher multiple of $4).

Under section 1886(b)(3)(B)(i) of the Act, the percentage increase used to update the payment rates for fiscal year 2005 for hospitals paid under the prospective payment system is the market basket percentage increase. However, under Section 501 of The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003), hospitals will receive the full market basket update, for fiscal years 2005 through 2007, only if they submit quality data as specified by the Secretary. Those hospitals that do not submit such data will receive an update of the market basket reduced by 0.4 percentage point (4/10of one percent). In determining the payment-weighted average of the updates to payment rates to hospitals in 2005, we are estimating that the payments to hospitals not submitting quality data will be insignificant.

Under section 1886(b)(3)(B)(ii) of the Act, the percentage increase used to update the payment rates for fiscal year 2005 for hospitals excluded from the prospective payment system is the market basket percentage increase, defined according to section 1886(b)(3)(B)(iii) of the Act.

The market basket percentage increase for fiscal year 2005 is 3.3 percent, as announced in the final rule titled ''Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2005 Rates,'' published in the **Federal Register** on August 11, 2004 (69 FR 48915). Therefore, the percentage increase for hospitals paid under the inpatient prospective payment system is 3.3 percent. The average payment percentage increase for hospitals excluded from the inpatient prospective payment system is 3.3 percent. Weighing these percentages in accordance with payment volume, our best estimate of the payment-weighted average of the increases in the payment rates for fiscal year 2005 is 3.3 percent.

To develop the adjustment for real case mix, we first calculated for each hospital an average case mix that reflects the relative costliness of that hospital's mix of cases compared to those of other hospitals. We then computed the change in average case mix for hospitals paid under the Medicare prospective payment system in fiscal year 2004 compared to fiscal year 2003. (We excluded from this calculation hospitals excluded from the prospective payment system because their payments are based on reasonable costs.) We used bills from prospective payment hospitals that we received as of July 2004. These bills represent a total of about 9.5 million discharges for fiscal year 2004 and provide the most recent case mix data available at this time. Based on these bills, the change in average case mix in fiscal year 2004 is 0.44 percent. Based on past experience, we expect the overall case mix change to be 0.7 percent as the year progresses and more fiscal year 2004 data become available.

Section 1813 of the Act requires that the inpatient hospital deductible be adjusted only by that portion of the case mix change that is determined to be real. We estimate that the change in real case mix for fiscal year 2004 is 0.7 percent.

Thus, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 3.3 percent, and the real case mix adjustment factor for the

deductible is 0.7 percent. Therefore, under the statutory formula, the inpatient hospital deductible for services furnished in calendar year 2005 is $912. This deductible amount is determined by multiplying $876 (the inpatient hospital deductible for 2004) by the payment-weighted average increase in the payment rates of 1.033 multiplied by the increase in real case mix of 1.007, which equals $911 and is rounded to $912.

III. Computing the Inpatient Hospital and Extended Care Services Coinsurance Amounts for 2005

The coinsurance amounts provided for in section 1813 of the Act are defined as fixed percentages of the inpatient hospital deductible for services furnished in the same calendar year. Thus, the increase in the deductible generates increases in the coinsurance amounts. For inpatient hospital and extended care services furnished in 2005, in accordance with the fixed percentages defined in the law, the daily coinsurance for the 61st through 90th day of hospitalization in a benefit period will be $228 (one-fourth of the inpatient hospital deductible); the daily coinsurance for lifetime reserve days will be $456 (one-half of the inpatient hospital deductible); and the daily coinsurance for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period will be $114 (one-eighth of the inpatient hospital deductible).

IV. Cost to Beneficiaries

Table 1 summarizes the deductible and coinsurance amounts for 2004 and 2005, as well as the number of each that is estimated to be paid.

TABLE 1.—PART A DEDUCTIBLE AND COINSURANCE AMOUNTS FOR CALENDAR YEARS 2004 AND 2005

Type of cost sharing	Value		Number paid (in millions)	
	2004	2005	2004	2005
Inpatient hospital deductible	$876	$912	9.07	9.14
Daily coinsurance for 61st–90th day	219	228	2.36	2.37
Daily coinsurance for lifetime reserve days	438	456	1.09	1.10
SNF coinsurance	109.50	114	28.79	29.16

The estimated total increase in cost to beneficiaries is about $610 million (rounded to the nearest $10 million), due to (1) the increase in the deductible and coinsurance amounts and (2) the change in the number of deductibles and daily coinsurance amounts paid.

V. Waiver of Proposed Notice and Comment Period

The Medicare statute, as discussed previously, requires publication of the Medicare Part A inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services for each calendar year. The amounts are determined according to the statute. As has been our custom, we use general notices, rather than notice and comment rulemaking procedures, to make the announcements. In doing so, we acknowledge that, under the Administrative Procedure Act, interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formulae used to calculate the inpatient hospital deductible and hospital and extended care services coinsurance amounts are statutorily directed, and we can exercise no discretion in following those formulae. Moreover, the statute establishes the time period for which the deductible and coinsurance amounts will apply and delaying publication would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). As stated in Section IV, we estimate that the total increase in costs to beneficiaries associated with this notice is about $610 million due to: (1) The increase in the deductible and coinsurance amounts and (2) the change in the number of deductibles and daily coinsurance amounts paid. Therefore, this notice is a major rule as defined in Title 5, United States Code, section 804(2) and is an economically significant rule under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. For purposes of the RFA, States and individuals are not considered small entities. We have determined that this notice will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis for the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are

not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This notice has no consequential effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Sections 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e–2(b)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: August 30, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 1, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–20414 Filed 9–3–04; 5:00 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8022–N]

RIN 0938–AN15

Medicare Program; Part A Premium for 2005 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the Hospital Insurance premium for calendar year 2005 under Medicare's Hospital Insurance program (Part A) for the uninsured, not otherwise eligible aged (hereafter known as the ''uninsured aged'') and for certain disabled individuals who have exhausted other entitlement. The monthly Medicare Part A premium for the 12 months beginning January 1, 2005 for these individuals is $375. The reduced premium for certain other individuals as described in this notice is $206. Section 1818(d) of the Social Security Act specifies the method to be used to determine these amounts.

EFFECTIVE DATE: This notice is effective January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the Medicare Hospital Insurance program (Medicare Part A), subject to payment of a monthly premium, of certain persons aged 65 and older who are uninsured under the Old-Age, Survivors and Disability Insurance (OASDI) program or the Railroad Retirement Act and do not otherwise meet the requirements for entitlement to Medicare Part A. (Persons insured under the OASDI program or the Railroad Retirement Act and certain others do not have to pay premiums for hospital insurance.)

Section 1818(d) of the Act requires us to estimate, on an average per capita basis, the amount to be paid from the Federal Hospital Insurance Trust Fund for services performed and related administrative costs incurred in the following calendar year with respect to individuals aged 65 and over who will be entitled to benefits under Medicare Part A. We must then determine, during September of each year, the monthly actuarial rate for the following year (the per capita amount estimated above divided by 12) and publish the dollar amount for the monthly premium in the succeeding calendar year. If the premium is not a multiple of $1, the premium is rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not of $1, it is rounded to the next highest $1). The 2004 premium under this method was $343 and was effective January 1, 2004. (*See* 68 FR 61002, October 24, 2003.)

Section 1818A of the Act provides for voluntary enrollment in Medicare Part A, subject to payment of a monthly premium, of certain disabled individuals who have exhausted other entitlement. These are individuals who are not currently entitled to Part A coverage, but who were entitled to coverage due to a disabling impairment under section 226(b) of the Act, and who would still be entitled to Part A coverage if their earnings had not exceeded the statutorily defined substantial gainful activity amount (section 223(d)(4) of the Act).

Section 1818A(d)(2) of the Act specifies that the provisions relating to premiums under section 1818(d) through (f) of the Act for the aged will also apply to certain disabled individuals as described above.

Section 13508 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) amended section 1818(d) of the Act to provide for a reduction in the premium amount for certain voluntary (section 1818 and 1818A) enrollees. The reduction applies to an individual who is eligible to buy into the Medicare Part A program and who, as of the last day of the previous month—

- Had at least 30 quarters of coverage under title II of the Act;
- Was married, and had been married for the previous 1-year period, to a person who had at least 30 quarters of coverage;
- Had been married to a person for at least 1 year at the time of the person's death if, at the time of death, the person had at least 30 quarters of coverage; or
- Is divorced from a person and had been married to the person for at least 10 years at the time of the divorce if, at the time of the divorce, the person had at least 30 quarters of coverage.

Section 1818(d)(4)(A) of the Act specifies that the premium that these individuals will pay for calendar year 2005 will be equal to the premium for uninsured aged enrollees reduced by 45 percent.

II. Monthly Premium Amount for 2005

The monthly premium for the uninsured aged and certain disabled individuals who have exhausted other entitlement, for the 12 months beginning January 1, 2005, is $375.

The monthly premium for those individuals subject to the 45 percent reduction in the monthly premium is $206.

III. Monthly Premium Rate Calculation

As discussed in section I of this notice, the monthly Medicare Part A premium is equal to the estimated monthly actuarial rate for 2005 rounded to the nearest multiple of $1 and equals one-twelfth of the average per capita amount, which is determined by projecting the number of individuals aged 65 and over entitled to Hospital Insurance and the benefits and administrative costs that will be incurred on their behalf.

The steps involved in projecting these future costs to the Federal Hospital Insurance Trust Fund are:

• Establishing the present cost of services furnished to beneficiaries, by type of service, to serve as a projection base;

• Projecting increases in payment amounts for each of the service types; and

• Projecting increases in administrative costs.

We base our projections for 2005 on: (a) current historical data, and (b) projection assumptions derived from current law and the Mid-Session Review of the President's Fiscal Year 2005 Budget.

We estimate that in calendar year 2005, 34.89 million people aged 65 and over will be entitled to benefits (without premium payment) and that they will incur $156.827 billion of benefits and related administrative costs. Thus, the estimated monthly average per capita amount is $374.57 and the monthly premium is $375. The full monthly premium reduced by 45 percent is $206.

IV. Costs to Beneficiaries

The 2005 premium of $375 is about 9 percent higher than the 2004 premium of $343.

We estimate that approximately 433,000 enrollees will voluntarily enroll in Medicare Part A by paying the full premium. We estimate an additional 1,000 enrollees will pay the reduced premium. We estimate that the aggregate cost to enrollees paying these premiums will be about $166 million in 2005 over the amount that they paid in 2004. We estimate that the total cost, in 2005, to enrollees paying these premiums will be about $1.951 billion.

V. Waiver of Notice of Proposed Rulemaking

We are not using notice and comment rulemaking in this notification of Part A premiums for 2005, as that procedure is unnecessary because of the lack of discretion in the statutory formula that is used to calculate the premium and the solely ministerial function that this notice serves. The Administrative Procedure Act permits agencies to waive notice and comment rulemaking when this notice and public comment thereon are unnecessary. On this basis, we waive publication of a proposed notice and a solicitation of public comments.

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). As stated in Section IV, we estimate that the overall effect of these changes in the premium will be a cost to voluntary enrollees (section 1818 and 1818A of the Act) of about $166 million. Therefore, this notice is a major rule as defined in Title 5, United States Code, section 804(2) and is an economically significant rule under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not considered to be small entities. We have determined that this notice will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis for the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice will not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Authority: Sections 1818(d)(2) and 1818A(d)(2) of the Social Security Act (42 U.S.C. 1395i–2(d)(2) and 1395i–2a(d)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: August 30, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 1, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–20413 Filed 9–3–04; 5:00 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8020–N]

RIN: 0938–AN18

Medicare Program; Medicare Part B Monthly Actuarial Rates, Premium Rate, and Annual Deductible Beginning January 1, 2005

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: In accordance with section 1839 of the Social Security Act (the Act), this notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under age 65) enrollees for the Part B account in the Medicare Supplementary Medical Insurance (SMI) trust fund for 2005. It also announces the monthly Part B premium to be paid by enrollees during 2005. The monthly actuarial rates for 2005 are $156.40 for aged enrollees and $191.80 for disabled enrollees. The monthly Part B premium rate for 2005 is $78.20. (The 2004 premium rate was $66.60.) The 2005 Part B premium is equal to 50 percent of the monthly actuarial rate for aged enrollees, or about 25 percent of Part B costs for aged enrollees.

Section 629 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173, also known informally as the Medicare Modernization Act, or MMA) requires that the Part B deductible be indexed beginning in 2006. In addition, under the statute, the 2005 deductible is set at $110.00, an increase of $10 from 2004. The inflation factor to be used beginning in 2006 and each year thereafter is the annual percentage increase in the Part B actuarial rate for enrollees age 65 and over. Since the Part B deductible is directly related to the increase in the aged actuarial rate, the announcement of the Part B deductible is included in this notice. The Part B deductible for 2005 is $110.00.

DATES: Effective January 1, 2005.

FOR FURTHER INFORMATION CONTACT: John D. Shatto, (410) 786–0706.

SUPPLEMENTARY INFORMATION:

I. Background

Part B is the voluntary portion of the Medicare program that pays all or part of the costs for physicians' services, outpatient hospital services, certain home health services, services furnished by rural health clinics, ambulatory surgical centers, comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by hospital insurance (HI, or Medicare Part A). Medicare Part B is available to individuals who are entitled to HI, as well as to U.S. residents who have attained age 65 and are citizens, and aliens who were lawfully admitted for permanent residence and have resided in the United States for 5 consecutive years. Part B requires enrollment and payment of monthly premiums, as provided for in 42 CFR part 407, subpart B, and part 408, respectively. The difference between the premiums paid by all enrollees and total incurred costs is met from the general revenues of the Federal Government.

The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1839 of the Social Security Act (the Act) to issue two annual notices relating to Part B.

One notice announces two amounts that, according to actuarial estimates, will equal, respectively, one-half the expected average monthly cost of Part B for each aged enrollee (age 65 or over) and one-half the expected average monthly cost of Part B for each disabled enrollee (under age 65) during the year beginning the following January. These amounts are called ''monthly actuarial rates.'' Also included in this notice, beginning this year, is the announcement of the Part B deductible to be paid by enrollees for the year beginning the following January.

The second notice announces the monthly Part B premium rate to be paid by aged and disabled enrollees for the year beginning the following January. (Although the costs to the program per disabled enrollee are different than for the aged, the statute provides that they pay the same premium amount.) Beginning with the passage of section 203 of the Social Security Amendments of 1972 (Pub. L. 92–603), the premium rate, which was determined on a fiscal year basis, was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly Title II social security benefits.

However, the passage of section 124 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) suspended this premium determination process. Section 124 of TEFRA changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). Section 606 of the Social Security Amendments of 1983 (Pub. L. 98–21), section 2302 of the Deficit Reduction Act of 1984 (DEFRA '84) (Pub. L. 98–369), section 9313 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA '85) (Pub. L. 99–272), section 4080 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Pub. L. 100–203), and section 6301 of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101–239) extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). This extension expired at the end of 1990.

The premium rate for 1991 through 1995 was legislated by section 1839(e)(1)(B) of the Act, as added by section 4301 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Pub. L. 101–508). In January 1996, the premium determination basis would have reverted to the method established by the 1972 Social Security Act Amendments. However, section 13571 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) (Pub. L. 103–66) changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees) for 1996 through 1998.

Section 4571 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) permanently extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees).

The BBA included a further provision affecting the calculation of the Part B actuarial rates and premiums for 1998 through 2003. Section 4611 of the BBA modified the home health benefit payable under Part A for individuals enrolled in Part B. Under this section, expenditures for home health services not considered ''post-institutional'' are payable under Part B rather than Part A, beginning in 1998. However, section 4611(e)(1) of the BBA required that there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from Part A to Part B. Section 4611(e)(2) of the BBA also provided a specific yearly proportion for the transferred funds. The proportions were 1/6, for 1998, 1/3 for 1999, 1/2 for 2000, 2/3 for 2001, and 5/6 for 2002. For the purpose of determining the correct amount of financing from general revenues of the Federal Government, it was necessary to include only these transitional amounts in the monthly actuarial rates for both aged and disabled enrollees, rather than the total cost of the home health services being transferred. Accordingly, the actuarial rates shown in this announcement for CY 2002 in tables 3 and 4 reflect the net transitional cost only.

Section 4611(e)(3) of the BBA also specified, for the purpose of determining the premium, that the monthly actuarial rate for enrollees age 65 and over be computed as though the transition would occur for 1998 through 2003 and that 1/7 of the cost be transferred in 1998, 2/7 in 1999, 3/7 in 2000, 4/7 in 2001, 5/7 in 2002, and 6/7 in 2003. Therefore, the transition period for incorporating this home health transfer into the premium was 7 years while the transition period for including these services in the actuarial rate was 6 years.

Section 1933(c) of the Act, as added by section 4732(c) of the BBA, required the Secretary to allocate money from the Part B trust fund to the State Medicaid programs for the purpose of providing Medicare Part B premium assistance from 1998 through 2002 for the low-income Medicaid beneficiaries who qualify under section 1933. This allocation, while not a benefit expenditure, was an expenditure of the trust fund and was included in calculating the Part B actuarial rates through 2002. For 2003 and 2004, the expenditure was made from the trust fund because the allocation was temporarily extended. However, because the extension occurred after the

financing was determined, the allocation was not included in the calculation of the financing rates.

As determined according to section 1839(a)(3) of the Act and section 4611(e)(3) of the BBA, the premium rate for 2005 is $78.20.

A further provision affecting the calculation of the Part B premium is section 1839(f) of the Act, as amended by section 211 of the Medicare Catastrophic Coverage Act of 1988 (MCCA '88) (Pub. L. 100–360). (The Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101–234) did not repeal the revisions to section 1839(f) made by MCCA '88.) Section 1839(f), referred to as the hold-harmless provision, provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the Part B premiums deducted from these benefit payments, the premium increase will be reduced, if necessary, to avoid causing a decrease in the individual's net monthly payment. This decrease in payment occurs if the increase in the individual's social security benefit due to the cost-of-living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's Part B premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits.

A check for benefits under section 202 or 223 of the Act is received in the month following the month for which the benefits are due. The Part B premium that is deducted from a particular check is the Part B payment for the month in which the check is received. Therefore, a benefit check for November is not received until December, but has December's Part B premium deducted from it.

Generally, if a beneficiary qualifies for hold-harmless protection-that is, if the beneficiary was in current payment status for November and December of the previous year—the reduced premium for the individual for that January and for each of the succeeding 11 months for which he or she is entitled to benefits, under section 202 or 203 of the Act, is the greater of the following:

(1) The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the Part B premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the Part B premium for December; or

(2) The monthly premium for that individual for that December.

In determining the premium limitations under section 1839(f) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 of the Act do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount is established under section 1839(f) of the Act, it will not be changed during the year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

Individuals who have enrolled in Part B late or who have reenrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. The increase is a percentage of the premium and is based on the new premium rate before any reductions under section 1839(f) are made.

II. Notice of Medicare Part B Monthly Actuarial Rates, Monthly Premium Rate, and Annual Deductible

The Medicare Part B monthly actuarial rates applicable for 2005 are $156.40 for enrollees age 65 and over, and $191.80 for disabled enrollees under age 65. Section III of this notice presents the actuarial assumptions and bases from which these rates are derived. The Part B monthly premium rate will be $78.20 during 2005. The Part B deductible for 2005 is $110.00.

III. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Monthly Premium Rate for Part B Beginning January 2005

A. Actuarial Status of the Part B Account in the Supplementary Medical Insurance Trust Fund

Under the statute, the starting point for determining the monthly premium is the amount that would be necessary to finance Part B on an incurred basis. This is the amount of income that would be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the year is added to the trust fund and used when needed.

The rates are established prospectively and are, therefore, subject to projection error. Additionally, legislation enacted after the financing was established, but effective for the period in which the financing is set, may affect program costs. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets must be maintained at a level that is adequate to cover a moderate degree of variation between actual and projected costs, and the amount of incurred, but unpaid, expenses. Numerous factors determine what level of assets is appropriate to cover a moderate degree of variation between actual and projected costs. The two most important of these factors are: (1) the difference from prior years between the actual performance of the program and estimates made at the time financing was established, and (2) the expected relationship between incurred and cash expenditures. Both factors are analyzed on an ongoing basis, as the trends vary over time.

Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 2003 and 2004.

TABLE 1.—ESTIMATED ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND AS OF THE END OF THE FINANCING PERIOD

[In millions of dollars]

Financing period ending	Assets	Liabilities	Assets less liabilities
Dec. 31, 2003	$23,953	$7,322	$16,631
Dec. 31, 2004	20,327	7,414	12,913

B. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate for enrollees age 65 and older is one-half of the sum of monthly amounts for (1) the projected cost of benefits, and (2) administrative expenses for each enrollee age 65 and older, after adjustments to this sum to allow for interest earnings on assets in the trust fund and an adequate contingency margin. The contingency margin is an amount appropriate to provide for a moderate degree of variation between actual and projected costs and to amortize any surplus or unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for 2005 is determined by first establishing per-enrollee cost by type of service from program data through 2003 and then projecting these costs for subsequent years. The projection factors used for financing periods from January 1, 2002 through December 31, 2005 are shown in table 2.

As indicated in table 3, the projected monthly rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for 2005 is $152.25. The monthly actuarial rate of $156.40 also provides an adjustment of −$2.00 for interest earnings and $6.15 for a contingency margin. Based on current estimates, the assets are not sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a moderate degree of variation between actual and projected costs. Thus, a positive contingency margin is needed to increase assets to a more appropriate level. This situation has arisen primarily due to the enactment of (1) the Consolidated Appropriations Resolution (Pub. L. 108–7) in February 2003, and (2) the Medicare Modernization Act (Pub. L. 108–173) in December 2003. Each of these two legislative packages was enacted after the establishment of the Part B premium (for 2003 and 2004, respectively). Because each act raised Part B expenditures subsequent to the setting of the premium, total Part B revenues from premiums and general fund transfers have been inadequate to cover total costs. As a consequence, the assets of the Part B account in the Supplementary Medical Insurance trust fund have been drawn on to cover the shortfall, and the remaining level of assets is inadequate for contingency purposes.

The contingency margin included in establishing the 2005 actuarial rate and beneficiary premiums takes a first step towards restoring the assets to an adequate level. In an effort to balance the financial integrity of the Part B account with the increase in the Part B premium, the financing rates for 2005 are set to increase the asset level in the Part B account about halfway towards the fully adequate level, with the expectation that future financing rates will need to include contingency margins to fully restore the assets.

C. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons under age 65 who are enrolled in Part B because of entitlement to disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease (ESRD) program. Projected monthly costs for disabled enrollees (other than those with ESRD) are prepared in a fashion parallel to the projection for the aged using appropriate actuarial assumptions (see table 2). Costs for the ESRD program are projected differently because of the different nature of services offered by the program.

As shown in table 4, the projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for 2005 is $175.13. The monthly actuarial rate of $191.80 also provides an adjustment of −$2.13 for interest earnings and $18.80 for a contingency margin. Based on current estimates, the assets associated with the disabled Medicare beneficiaries are not sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a moderate degree of variation between actual and projected costs. Thus, a positive contingency margin is needed to increase assets to a more appropriate level.

D. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. It is appropriate to test the adequacy of the rates using alternative assumptions. The results of those assumptions are shown in table 5. One set represents increases that are lower and, therefore, more optimistic than the current estimate. The other set represents increases that are higher and, therefore, more pessimistic than the current estimate. The values for the alternative assumptions were determined from a statistical analysis of the historical variation in the respective increase factors.

Table 5 indicates that, under the assumptions used in preparing this report, the monthly actuarial rates would result in an excess of assets over liabilities of $21,802 million by the end of December 2005. This amounts to 14.0 percent of the estimated total incurred expenditures for the following year. Assumptions that are somewhat more pessimistic (and that therefore test the adequacy of the assets to accommodate projection errors) produce a surplus of $9,410 million by the end of December 2005, which amounts to 5.4 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the monthly actuarial rates would result in a surplus of $33,315 million by the end of December 2005, or 23.7 percent of the estimated total incurred expenditures for the following year.

E. Premium Rate

As determined by section 1839(a)(3) of the Act, the monthly premium rate for 2005, for both aged and disabled enrollees, is $78.20.

F. Deductible

As specified by section 1833(b) of the Act, the annual deductible for 2005 is $110.00.

BILLING CODE 4120–01–P

Table 2—PROJECTION FACTORS[1]
12-MONTH PERIODS ENDING DECEMBER 31 OF 2002-2005
(In percent)

Calendar year	Physicians' services		Durable medical equipment	Carrier lab[4]	Other carrier services[5]	Outpatient hospital	Home health agency	Hospital lab[6]	Other intermediary services[7]	Managed care
	Fees[2]	Residual[3]								
Aged:										
2002	-4.0	5.6	13.0	6.8	16.7	-1.7	3.4	13.0	20.3	11.7
2003	1.5	4.7	14.7	7.2	16.4	5.1	-0.2	7.7	3.2	3.0
2004	3.8	3.2	0.2	6.5	3.9	8.2	13.4	5.1	8.7	12.7
2005	1.5	3.5	-0.4	6.5	13.0	6.4	7.4	7.3	9.5	6.3
Disabled:										
2002	-4.0	7.4	21.0	10.9	21.0	4.3	31.0	13.9	17.5	13.5
2003	1.5	6.5	17.7	7.6	25.9	6.2	-4.9	7.0	-2.8	0.4
2004	3.8	2.4	-0.1	6.1	6.1	6.6	12.5	6.3	-4.8	9.2
2005	1.5	3.4	-0.5	6.3	11.8	6.7	6.7	7.3	12.0	6.2

[1] All values for services other than managed care are per fee-for-service enrollee. Managed care values are per managed care enrollee.
[2] As recognized for payment under the program.
[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[4] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[5] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[6] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[7] Includes services furnished in dialysis facilities, rural health clinics, federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

Table 3—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FINANCING PERIODS ENDING DECEMBER 31, 2002 THROUGH DECEMBER 31, 2005

	Financing periods			
	CY 2002	CY 2003	CY 2004	CY 2005
Covered services (at level recognized):				
Physician fee schedule	64.71	69.42	74.47	76.78
Durable medical equipment	8.46	9.79	9.83	9.60
Carrier lab[1]	2.97	3.21	3.42	3.58
Other carrier services[2]	14.98	17.61	18.33	20.34
Outpatient hospital	22.50	23.89	25.87	27.02
Home health	5.62 [5]	5.66	6.42	6.77
Hospital lab[3]	2.30	2.50	2.63	2.77
Other intermediary services[4]	9.05	9.44	10.27	11.04
Managed care	20.58 [6]	20.09	22.50	26.41
Total services	151.17 [7]	161.62 [7]	173.75 [7]	184.32
Cost-sharing:				
Deductible	-4.06	-4.07	-4.05	-4.48
Coinsurance	-26.85	-28.54	-30.25	-30.94
Total benefits	120.26	129.01	139.45	148.90
Administrative expenses	2.35	2.45	3.25	3.34
Incurred expenditures	122.61	131.46	142.71	152.25
Value of interest	-3.20	-2.31	-1.79	-2.00
Adjustment for home health agency services transferred from HI	-1.07 [8]	—	—.	—
Contingency margin for projection error and to amortize the surplus or deficit	-9.04	-10.45	-7.72	6.15
Monthly actuarial rate	109.30	118.70	133.20	156.40

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.

[2] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.

[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.

[4] Includes services furnished in dialysis facilities, rural health clinics, federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

[5] This amount includes the full cost of the fee-for-service home health services being transferred from Part A as a result of the BBA as if the transition did not apply, as well as the cost of furnishing all home health services to those individuals enrolled in Part B only.

[6] This amount includes the full cost of the managed care home health services being transferred from Part A as a result of the BBA as if the transition did not apply, as well as the cost of furnishing all other Part B services to individuals enrolled in managed care.

[7] Includes transfers to Medicaid. Section 1933(c)(2) of the Act, as added by section 4732(c) of the BBA, allocates an amount to be transferred from the Part B account in the SMI trust fund to the state Medicaid programs. This transfer is for the purpose of paying the Part B premiums for certain low-income beneficiaries. It is not benefit expenditure but is used in determining the Part B actuarial rates since it is an expenditure of the trust fund.

[8] Section 4611 of the BBA specifies that expenditures for home health services not considered "post-institutional" will be payable under Part B rather than Part A beginning in 1998. However, section 4611(e)(1) requires that there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from Part A to Part B. For 1998, the amount transferred is 1/6 of the full cost for such services; for 1999, 1/3; for 2000, 1/2; for 2001, 2/3; and for 2002, 5/6. Therefore, the adjustment for 2002 represents 1/6 of the full cost. This amount adjusts the actuarial rate to reflect the correct amount attributable to home health services.

Table 4—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FINANCING PERIODS ENDING DECEMBER 31, 2002 THROUGH DECEMBER 31, 2005

	Financing periods			
	CY 2002	CY 2003	CY 2004	CY 2005
Covered services (at level recognized):				
Physician fee schedule	66.06	71.15	75.63	78.64
Durable medical equipment	14.20	16.66	16.64	16.41
Carrier lab[1]	3.50	3.84	4.10	4.31
Other carrier services[2]	16.25	20.06	21.24	23.55
Outpatient hospital	29.88	31.97	34.10	36.05
Home health	4.73 [5]	4.50	5.05	5.34
Hospital lab[3]	3.46	3.70	3.92	4.17
Other intermediary services[4]	34.16	34.96	35.64	37.21
Managed care	10.21 [6]	9.85	11.22	13.50
Total services	182.47 [7]	196.69 [7]	207.52 [7]	219.18
Cost-sharing:				
Deductible	-3.77	-3.78	-3.78	-4.17
Coinsurance	-38.14	-40.55	-42.21	-43.67
Total benefits	140.55	152.35	161.53	171.34
Administrative expenses	2.74	2.89	3.74	3.79
Incurred expenditures	143.30	155.25	165.27	175.13
Value of interest	-2.14	-1.23	-0.75	-2.13
Adjustment for home health agency services transferred from HI	-0.89 [8]	—	—	—
Contingency margin for projection error and to amortize the surplus or deficit	-17.17	-13.01	10.98	18.80
Monthly actuarial rate	$123.10	$141.00	$175.50	$191.80

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.

[2] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.

[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.

[4] Includes services furnished in dialysis facilities, rural health clinics, federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

[5] This amount includes the full cost of the fee-for-service home health services being transferred from Part A as a result of the BBA as if the transition did not apply, as well as the cost of furnishing all home health services to those individuals enrolled in Part B only.

[6] This amount includes the full cost of the managed care home health services being transferred from Part A as a result of the BBA as if the transition did not apply, as well as the cost of furnishing all other Part B services to individuals enrolled in managed care.

[7] Includes transfers to Medicaid. Section 1933(c)(2) of the Act, as added by section 4732(c) of the BBA, allocates an amount to be transferred from the Part B account in the SMI trust fund to the state Medicaid programs. This transfer is for the purpose of paying the Part B premiums for certain low-income beneficiaries. It is not a benefit expenditure but is used in determining the Part B actuarial rates since it is an expenditure of the trust fund.

[8] Section 4611 of the BBA specifies that expenditures for home health services not considered "post-institutional" will be payable under Part B rather than Part A beginning in 1998. However, section 4611(e)(1) requires that there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from Part A to Part B. For 1998, the amount transferred is 1/6 of the full cost for such services; for 1999, 1/3; for 2000, 1/2; for 2001, 2/3; and for 2002, 5/6. Therefore, the adjustment for 2002 represents 1/6 of the full cost. This amount adjusts the actuarial rate to reflect the correct amount attributable to home health services.

Table 5—Actuarial Status of the Part B Account in the SMI Trust Fund under Three Sets of Assumptions Financing Periods through December 31, 2005

As of December 31,	2003	2004	2005
This projection:			
Actuarial status (in millions):			
Assets	23,953	20,327	28,495
Liabilities	7,322	7,414	6,693
Assets less liabilities	16,631	12,913	21,802
Ratio (in percent)[1]	12.2	8.7	14.0
Low cost projection:			
Actuarial status (in millions):			
Assets	23,953	20,327	39,475
Liabilities	7,322	6,726	6,159
Assets less liabilities	16,631	13,600	33,315
Ratio (in percent)[1]	12.8	10.0	23.7
High cost projection:			
Actuarial status (in millions):			
Assets	23,953	20,327	16,577
Liabilities	7,322	8,221	7,167
Assets less liabilities	16,631	12,106	9,410
Ratio (in percent)[1]	11.5	7.5	5.4

[1]Ratio of assets less liabilities at the end of the year to the total incurred expenditures during the following year, expressed as a percent.

IV. Regulatory Impact Analysis

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1-year (65 FR 69432). For purposes of the RFA, States and individuals are not considered to be small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on a substantial number of small entities or on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this notice fall below this threshold as well.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not significantly affect the rights, roles, and responsibilities of States.

This notice announces that the monthly actuarial rates applicable for 2005 are $156.40 for enrollees age 65 and over and $191.80 for disabled enrollees under age 65. It also announces that the monthly Part B premium rate for calendar year 2005 is $78.20 and that the Part B deductible for calendar year 2005 is $110.00. The Part B premium rate of $78.20 is 17.4 percent higher than the $66.60 premium rate for 2004. We estimate that this increase will cost the approximately 40 million Part B enrollees about $5.5 billion for 2005. Therefore, this notice is a major rule as defined in Title 5, United States Code, section 804(2) and is an economically significant rule under Executive Order 12866.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

V. Waiver of Proposed Notice

The Medicare statute requires the publication of the monthly actuarial rates and the Part B premium amounts in September. We ordinarily use general notices, rather than notice and comment rulemaking procedures, to make such announcements. In doing so, we note that, under the Administrative Procedure Act, interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find, for good cause, that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formula used to calculate the Part B premium is statutorily directed, and we can exercise no discretion in applying that formula. Moreover, the statute establishes the time period for which the premium rates will apply, and delaying publication of the Part B premium rate such that it would not be published before that time would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

(Section 1839 of the Social Security Act; 42 U.S.C. 1395r)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: August 30, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services

Dated: September 1, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–20412 Filed 9–3–04; 5:00 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: HHS/ACF/ASPE/DOL Enhanced Services for the Hard-to-Employ Demonstration and Evaluation Project Follow-up Surveys.

OMB No.: New collection.

Description: The Enhanced Services for the Hard-to-Employ Demonstration and Evaluation Project (HtE) is the most ambitious, comprehensive effort to learn what works in this area to date and is explicitly designed to build on previous and ongoing research by rigorously testing a wide variety of approaches to promote employment and improve family functioning and child well-being. The HtE project will ''conduct a multi-site evaluation that studies the implementation issues, program design, net impact and benefit-costs of selected programs'' [1] designed to help Temporary Assistance for Needy Families (TANF) recipients, former TANF recipients, or low-income parents who are hard-to-employ. The project is sponsored by the Office of Planning, Research and Evaluation (OPRE) of the Administration for children and Families (ACF), the Office of the Assistance Secretary for Planning and Evaluation (ASPE) in the U.S. Department of Health and Human Services (HHS), and the U.S. Department of Labor (DOL).

The evaluation involves an experimental, random assignment design in five sites (four are confirmed), testing a diverse set of strategies to promote employment for low-income parents who face serious obstacles to employment. The four include: (1) Intensive care management to facilitate the use of evidence-based treatment for major depression among parents receiving Medicaid in Rhode Island; (2) job readiness training, worksite

[1] From the Department of Health and Human Services RFP No.: 233–01–0012.

placements, job coaching, job development and other training opportunities for recent parolees in New York City; (3) pre-employment services and transitional employment for long-term TANF participants in Philadelphia; and (4) home- and center-based care for low-income families who have young children or are expecting in Kansas and Missouri. The latter is a two-generation test, designed to help the children and their parents.

Over the next several years, the HtE project will generate a wealth of rigorous data on implementation, effects, and costs of these alternative approaches. The follow-up surveys will be used for the following purposes:

- To study the extent to which different HtE approaches impact employment, earnings, income, welfare dependence, and the presence or persistence of employment barriers.
- To study how different HtE strategies impact child well-being, when programs are directed toward parents, and when they are designed to target both generations.
- To collect data on a wider range of outcome measures than is available through Welfare, Medicaid, Food Stamps, Social Security, the Criminal Justice System or Unemployment Insurance records in order to understand the family circumstances and attributes and situations that contribute to the difficulties in finding employment; job retention and job quality; educational attainment; interactions with and knowledge of the HtE program; household composition; child care; transportation; health care; income; physical and mental health problems; substance abuse; domestic violence; and criminal history.
- To conduct non-experimental analyses to explain participation decisions and provide a descriptive picture of the circumstances of individuals who are hard-to-employ.
- To obtain participation information important to the evaluation's benefit-cost component; and to obtain contact information for possible future follow-up, information that will be important to achieving high response rates for additional surveys.

Materials for the HtE baseline survey were previously submitted to OMB on April 29, 2003, and a revised packet for the Rhode Island site was submitted on April 7, 2004. Both submissions have been approved by OMB.

The purpose of this submission is to introduce the five survey instruments that will be used to collect follow-up data in the four confirmed sites. These are as follows:

1. A 6-month follow-up survey in Rhode island (Mental Health Test).
2. A 15-month follow-up survey in Rhode island (Mental Health Test).
3. A 12-month follow-up survey in new York City (Recent Parolees).
4. A 12-month follow-up survey in Philadelphia (Transitional Employment for long-term TANF participants).

b. A 12-month follow-up in Kansas and Missouri (Two-Generation Test).

We believe that content for the fifth site's 12-month survey will be drawn from questions already included in these follow-up surveys.

Respondents: The respondents to these follow-up surveys will be low-income individuals from the five states represented by the four sites currently participating in the HtE Project: Kansas, Missouri, New York, Pennsylvania, and Rhode Island. Many will be current or former TANF participants, and many will be current or former recipients of Medicaid. These populations are at heightened risk for all of the barriers that cause people to be hard-to-employ.

Prior to these follow-up surveys, basic demographic information for all survey respondents will have been obtained wherever possible from the existing automated systems or brief baseline information forms. In the Rhode Island site, respondents will have completed a more detailed baseline survey, which is required to establish baseline measures of depression and related conditions.

The annual burden estimates are detailed below, and the substantive content of each survey will be detailed in the supporting statement attached to the forthcoming 30-day notice.

ANNUAL BURDEN ESTIMATES

Instrument	Number of LI≤ respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
6-month, Rhode Island	734	1	38 minutes or .63 hrs	464.87
15-month, Rhode Island	734	1	77 minutes or 1.28 hrs	941.97
12-month, New York City	500	1	32 minutes or .53 hrs	266.67
12-month, Philadelphia	750	1	25 minutes or .42 hrs	312.5
12-month, Kansas/Missouri	680	1	52 minutes or .87 hrs	589.33

Estimated Total Annual Burden Hours: 2,575.34.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects fo the information collection described above. Copies of hte proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 2, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–20371 Filed 9–8–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State Plan for Child Support Under Title IV–D of the Social Security Act (OCSE–100 and OCSE–21–U4).

OMB No.: 0970–0017.

Description: The State plan serves as a contract between the Office of Child Support Enforcement (OCSE) and State IV–D agencies in outlining the activities the State will perform as required by law in order for States to receive Federal funds for child support enforcement. The information collected on the State plan pages is necessary to enable OCSE to determine whether each State has a IV–D State plan that meets the requirements in title IV–D of the Social Security Act (the Act) and implementing regulations. The State plan preprint gives each State a convenient method for developing a statement to be submitted to OCSE for approval describing the nature and scope of its program and giving assurances that the program will be administered in conformity with the requirements in title IV–D of the Act and the implementing regulations at 45 CFR chapter III. Once received, the Federal office will review the State plan to ensure its compliance with regulations.

Respondents: State IV–D Agencies.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan (OCSE–100)	54	6	.5	162
State Plan Transmittal (OCSE–21–U4)	54	6	.25	81
Estimated Total Annual Burden Hours:				243

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All Requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, e-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: September 2, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–20372 Filed 9–8–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Nonvoting Members Representing Industry Interests on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for nonvoting industry representatives to serve on public advisory committees under the purview of the Center for Biologics Evaluation and Research (CBER).

DATES: Industry organizations interested in participating in the selection of a nonvoting member to represent industry for vacancies listed in this notice must send a letter to FDA by October 12, 2004, stating their interest in one or more committees.

Concurrently, nomination materials for prospective candidates should be sent to FDA by October 12, 2004. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative.

ADDRESSES: All letters of interest and nominations should be sent to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

FOR FURTHER INFORMATION CONTACT: Gail Dapolito, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20857–1448, 301–827–0314, e-mail: *dpolito@cber.fda.gov*.

SUPPLEMENTARY INFORMATION: Section 120 of the FDA Modernization Act of (FDAMA) of 1997 (21 U.S.C. 355) requires that FDA advisory committees include representatives from the biologics manufacturing industries. The agency intends to add nonvoting industry representatives to all its advisory committees identified in section I of this document.

I. Functions

Advisory Committees Under the Purview of CBER

A. Allergenic Products Advisory Committee

The committee reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic diseases.

B. Blood Products Advisory Committee

The committee reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood and products derived from blood and serum or biotechnology which are intended for use in the diagnosis,

prevention, or treatment of human diseases.

C. Transmissible Spongiform Encephalopathies Advisory Committee

The committee reviews and evaluates available scientific data concerning the safety of products which may be at risk for transmission of spongiform encephalopathies having an impact on the public health.

D. Vaccines and Related Biological Products Advisory Committee

The committee reviews and evaluates data concerning the safety, effectiveness, and appropriate use of vaccines and related biological products which are intended for use in the prevention, treatment, or diagnosis of human diseases.

II. Selection Procedure

Any organization in the biologics manufacturing industry wishing to participate in the selection of a nonvoting member to represent industry on a particular advisory committee should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this notice. Persons who nominate themselves as industry representatives for a certain advisory committee will not participate in the selection process. It is, therefore, recommended that nominations be made by someone within an organization, trade association, or firm who is willing to participate in the selection process. Within the subsequent 30 days, FDA will send a letter to each organization and a list of all nominees along with their resumes. The letter will state that the interested organizations are responsible for conferring with one another to select a candidate, within 60 days after receiving the letter, to serve as the nonvoting member representing on a particular advisory committee. If no individual is selected within that 60 days, the Commissioner of Food and Drugs may select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may nominate themselves or an organization representing the biologics manufacturing industry may nominate one or more individuals to serve as nonvoting industry representatives. A current curriculum vitae (which includes the nominee's business address, telephone number, and e-mail address) and the name of the committee of interest should be sent to the FDA contact person. FDA will forward all nominations to the organizations that have expressed interest in participating in the selection process for that committee.

FDA has a special interest in ensuring that women, minority groups, individuals with physical disabilities, and small businesses are adequately represented on its advisory committees. Therefore, the agency encourages nominations for appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: August 31, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–20348 Filed 9–8–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004F–0374]

Kraft Foods Global, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Kraft Foods Global, Inc., has filed a petition proposing that the food additive regulations be amended to permit the use of vitamin D3 in cheese and cheese products at a level above that currently allowed by the regulations.

FOR FURTHER INFORMATION CONTACT: Judith L. Kidwell, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3354.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP No. 4A4758) has been filed by Kraft Foods Global, Inc., c/o Hogan and Hartson, 555 13th Street, NW., Washington, DC 20004. The petition proposes to amend the food additive regulations in § 172.380 *Vitamin D_3* (21 CFR 172.380) to permit the use of vitamin D_3 in cheese and cheese products at a level above that permitted under § 184.1950 *Vitamin D* (21 CFR 184.1950).

The agency has determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: August 9, 2004.

Laura M. Tarantino,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 04–20473 Filed 9–8–04; 8:45 am]

BILLING CODE 4160–01–S

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 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; New Technologies for Monitoring the Tumor Microenvironment.

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.

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. 93.392, 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: September 1, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20434 Filed 9–8–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMANS SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel EDRN: Clinical Epidemiology & Validation Centers.

Date: November 10, 2004.

Time: 8 a.m. 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852.

Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Bouldevard, Room 8088, Rockville, MD 20852, 301/594–1279.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 1, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20439 Filed 9–8–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; High-Sensitivity mutation scanning with designer enzymes.

Date: September 10, 2004.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, Special Review and Logistics Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8053, Bethesda, MD 20892, (301) 435–1822.

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. 93.392, 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: September 1, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20441 Filed 9–8–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; National Cooperative Drug Discovery Groups for Cancer.

Date: October 27–29, 2004.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review And Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 7142, Bethesda, MD 20892, 301/594–9582, *vollbert@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer 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: September 1, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20442 Filed 9–8–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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; SBIR Topics 187 & 189.

Date: September 30, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review and Logistics Branch, Division Of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329, 301–496–7421, *kerwinm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 1, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20444 Filed 9–8–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Paul Calabresi Award for Clinical Oncology (K12) PAR–04–096.

Date: September 29, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Morrison House, 116 S. Alfred Street, Alexandria, VA 22314.

Contact Person: Robert Bird, PhD, Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., MSC 8328, Room 8113, Bethesda, MD 20892–8328, (301) 496–7978, *birdr@mail.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.

(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 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20446 Filed 9–8–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 the following meetings.

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 Center for Research Resources Initial Review Group Comparative Medicine Review Committee.

Date: October 5–6, 2004.

Open: October 5, 2004, 8 a.m. to 8:30 a.m.

Agenda: To discuss program planning and other issues.

Place: Four Points By Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: October 5, 2004, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Four Points By Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guo Zhang, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Democracy Plaza, 6701 Democracy Blvd., Room WS–1064, 10th Floor, Bethesda, MD 20814-9692, (301) 435–0812, *zhanggu@mail.nih.gov.*

Name of Committee: National Center for Research Resources Initial Review Group Clinical Research Review Committee.

Date: October 6–7, 2004.

Open: October 6, 2004, 8 a.m. to 9 a.m.

Agenda: To discuss program planning and other issues.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Closed: October 6, 2004, 9 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mohan Viswanathan, PhD, Deputy Director, National Center for Research Resources, or, National Institutes of Health, 6701 Democracy Blvd., Room 1084, MSC 4874, 1 Democracy Plaza, Bethesda, MD 20892-4874, (301) 435–0829, *mv10f@nih.gov.*

Name of Commitee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date: October 13–15, 2004.

Open: October 13, 2004, 8 a.m. to 9 a.m.

Agenda: To discuss program planning and other issues.

Place: Double Tree Rockville Hotel, 1750 Rockville Pike, Rockville, MD 20814.

Closed: October 13, 2004, 9 a.m. to Adjournment.

Agenda: To reveiw and evaluate grant applications.

Place: Double Tree Rockville Hotel, 1750 Rockville Pike, Rockville, MD 20814.

Contact Person: Barbara J. Nelson, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, NIH, 6701 Democracy Blvd., Room 1080, 1 Democracy Plaza, Bethesda, MD 20892, (301) 435–0806.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: September 1, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy

[FR Doc. 04–20447 Filed 9–8–04; 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; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Neurological Disorders and Stroke Council, September 8, 2004, 8 p.m. to September 8, 2004, 10 p.m. Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on August 20, 2004, FR 69 04–19134.

The Infrastructure, Neuroinformatics and Computational Neuroscience Subcommittee to be held on September 8th will be open to the public from 8–9 p.m. and closed from 9–10 p.m. The meeting is partially Closed to the public.

Dated: August 30, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20433 Filed 9–8–04; 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, SARS Unsolicited P01.

Date: September 28, 2004.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, 3200, Bethesda, MD 20817 (Telephone Conference Call.)

Contact Person: Adriana Costero, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases/NIH/DHHS, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892, (301) 451–4573, *acostero@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, SARS Unsolicited P01.

Date: September 30, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 4200, Bethesda, MD 20817 (Telephone Conference Call.)

Contact Person: Adriana Costero, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases/NIH/DHHS, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892, (301) 451–4573, *acostero@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 1, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20435 Filed 9–8–04; 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 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 AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: September 27, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: Report of the Division Director, AIDS Vaccine Research Working Group Update, Concept Reviews.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601, 301–435–3732.

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. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 1, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20436 Filed 9–8–04; 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; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, October 6, 2004, 6 p.m. to October 7, 2004, 5 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on August 26, 2004, 69 FR 19544.

The meeting will be held October 24–25, 2004 from 6 p.m. until 5 p.m. The meeting is closed to the public.

Dated: September 1, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20437 Filed 9–8–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Child Interventions Panel.

Date: October 13–14, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandra Mark Center, 5000 Seminary Road, Alexandria, VA 22311.

Contact Person: Christopher S. Sarampote, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1959, *csarampo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

September 1, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20438 Filed 9–8–04; 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 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 open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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 Initial Review Group; Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: October 14–15, 2004.

Open: October 14, 2004, 2 p.m. to 2:30 p.m.

Agenda: To review procedures and discuss policies.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Hwy., Arlington, VA 22202.

Closed: October 14, 2004, 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Hwy., Arlington, VA 22202.

Closed: October 15, 2004, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Hwy., Arlington, VA 22202.

Contact Person: Neal A. Musto, PhD, Scientific Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 751, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–7798, *muston@extra.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: September 1, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20443 Filed 9–8–04; 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 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 Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: September 14–15, 2004.

Open: September 14, 2004, 1 p.m. to 5 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Closed: September 15, 2004, 9 a.m. to adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Claudette Varricchio, Assistant Director, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Room 710, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

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.

Information is also available on the Institute's/Center's home page *http://www.nih.gov/ninr/a_advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 1, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20445 Filed 9–8–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel, Studies to Evaluate the Toxicologic Potential of Selected Test Agents.

Date: September 30, 2004.

Time: 10:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122, Research Triangle Park, NC 27709, (telephone conference call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Office of Program Operations, Scientific Review Branch, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919–541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks From Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 30, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20448 Filed 9–8–04; 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; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Neurological Disorders and Stroke Council, September 9, 2004, 8 a.m. to September 9, 2004, 10 a.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on August 20, 2004, FR69 04–19134.

The Training and Career Development Subcommittee meeting to be held on September 9th will be open to the public from 8–9:30 a.m. and closed from 9:30–10 a.m. The meeting is partially Closed to the public.

Dated: August 30, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20449 Filed 9–8–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 of 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 Environmental Health Sciences Special Emphasis Panel P01 Review.

Date: November 8–9, 2004.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites Hotel, 300 Meredith Drive, Durham, NC 27713.

Contact Person: Janice B Allen, PhD, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 30, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20450 Filed 9–8–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Environmental Health Sciences; 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 person 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 Environmental Health Sciences Special Emphasis Panel; Transition to Independent Positions (TIP).

Date: November 5, 2004.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Janice B. Allen, PhD, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 30, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20451 Filed 9–8–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel; SBIR/STTR E-Learning for Hazmat and Emergency Response.

Date: November 4, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Radisson Governor's Inn, I–40 at Davis Drive, Exit 280, Research Triangle Park, NC 27709.

Contact Person: Sally Eckert-Tilotta, PhD, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–1446, *eckertt1@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113 Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 30, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20452 Filed 9–8–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel, P01 Review.

Date: December 1, 2004.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Science, Building 4401, East Campus, 79 T. W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call.)

Contact Person: Sally Eckert-Tilotta, PhD, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 30, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20453 Filed 9–8–04; 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 properly 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; Genes and Proteins in Inner Ear.

Date: September 27, 2004.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Drug Abuse ZRG1 IFCN A (03) M.

Date: September 27, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Information Processing Cortical Areas ARG 1IFCN F (03)M.

Date: September 28, 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: Daniel R. Kenishalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255, *kenshalod@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group; Cell Development and Function 2.

Date: October 6–7, 2004.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026, *nayakr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Membrane Biology.

Date: October 8, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026, *nayakr@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Molecular Neuropharmacology and Signaling Study Section.

Date: October 12–13, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jury's Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *husains@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Sensorimotor Integration Study Section.

Date: October 12, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group; Medicinal Chemistry Study Section.

Date: October 13–14, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Robert Lees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7806, Bethesda, MD 20892, (301) 435–2684, *leesro@csr.nih.gov.*

Name of Committee: Respiratory Sciences Integrated Review Group; Lung Injury, Repair, and Remodeling Study Section.

Date: October 13–14, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Ghenima Dirami, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7818, Bethesda, MD 20892, (301) 594–1321, *diramig@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Central Visual Processing Study Section.

Date: October 13–14, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, *steinmem@csr.nih.gov.*

Name of Committee: Respiratory Sciences Integrated Review Group; Lung Cellular, Molecular, and Immunobiology Study Section.

Date: October 13–14, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndam City Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 F02B (20)L Fellowships: Sensory, Motor and Cognitive Neuroscience.

Date: October 13, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 CDP 01 Q: Chemo/Dietary Prevention Study Section.

Date: October 13–15, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20892, 301–435–3504, *vf6n@nih.gov.*

Name of Committee: Health of the Population Integrated Review Group; Nursing Science: Adults and Older Adults Study Section.
Date: October 14–15, 2004.
Time: 8 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.
Contact Person: Gertrude K. McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, (301) 435–1784, *mcfarlag@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Pathogenic Eukaryotes Study Section.
Date: October 14–15, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3194, MSC 7808, Bethesda, MD 20892, (301) 435–1146, *hickmanj@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group; Cell Development and Function 4.
Date: October 14–15, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Alexandra Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, 301–451–3848, *ainsztea@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurodegeneration and Biology of Glia Study Section.
Date: October 14–15, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Toby Behar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Synapses, Cytoskeleton and Trafficking Study Section.
Date: October 14–15, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Washington, Pennsylvania Ave at 15th Street, NW., Washington, DC 20004.
Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7850, Bethesda, MD 20892, (301) 435–1251, *bannerc@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Learning and Memory Study Section.
Date: October 14–15, 2004.
Time: 8 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Physiology of Obesity and Diabetes Study Section.
Date: October 14–15, 2004.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Reed A. Graves, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group; Cancer Genetics Study Section.
Date: October 14–15, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Zhiqiang Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 451–0132, *zouzhiq@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group; Epidemiology of Chronic Diseases Study Section.
Date: October 14–15, 2004.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: J. Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782, *osbornes@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Clinical Neuroimmunology and Brain Tumors (CNBT).
Date: October 14–15, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Jay Joshi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184, *joshij@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group; Cell Development and Function 3.
Date: October 14–15, 2004.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, *ehrenspg@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—B.
Date: October 14–15, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892, (301) 435–1050, *freundr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioanalytical Engineering and Chemistry Panel.
Date: October 14–15, 2004.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Crystal City, 2399 Jefferson Davis Highway, Crystal City, VA 22202.
Contact Person: Noni Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, (301)–435–1217, *byrnesn@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Behavioral Medicine, Interventions and Outcomes Study Section.
Date: October 14–15, 2004.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA, 22102.

Contact Person: Lee S. Mann, MA, JD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301)–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: October 14–15, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, MD 20892, (301)–594–3163, *champoum@csr.nih.gov.*

Name of Committee: Biochemical Sciences Integrated Review Group; Pathobiochemistry Study Section.

Date: October 15, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301)–435–1742, *bengaliz@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Software Development.

Date: October 15, 2004.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Marc Rigas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7826, Bethesda, MD 20892, (301)–402–1074, *rigasm@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Biological Rhythms and Sleep Study Section.

Date: October 15, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, (301)–435–1245, *marcusr@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: September 1, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–20440 Filed 9–8–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Regulations to Implement SAMHSA's Charitable Choice Statutory Provisions—42 CFR parts 54 and 54a (OMB No. 0930–0242, Revision)—Section 1955 of the Public Health Service Act (42 U.S.C. 300x–65), as amended by the Children's Health Act of 2000 (Pub. L. 106–310) and Sections 581–584 of the Public Health Service Act (42 U.S.C. 290kk *et seq.*, as added by the Consolidated Appropriations Act (Pub. L. 106–554)), set forth various provisions which aim to ensure that religious organizations are able to compete on an equal footing for Federal funds to provide substance abuse services. These provisions allow religious organizations to offer substance abuse services to individuals without impairing the religious character of the organizations or the religious freedom of the individuals who receive the services. The provisions apply to the Substance Abuse Prevention and Treatment Block Grant (SAPT BG), to the Projects for Assistance in Transition from Homelessness (PATH) formula grant program, and to certain Substance Abuse and Mental Health Services Administration (SAMHSA) discretionary grant programs (programs that pay for substance abuse treatment and prevention services, not for certain infrastructure and technical assistance activities). Every effort has been made to assure that the reporting, recordkeeping and disclosure requirements of the proposed regulations allow maximum flexibility in implementation and impose minimum burden.

No changes are being made to the regulations. This revision is for approval of the annual checklists to be completed by discretionary and PATH grantees to provide the information required to be reported by 42 CFR part 54a.8(d) and 54.8(e), respectively, and to ascertain how they are implementing the disclosure requirements of 54a.8(b) and 54.8(b), respectively. Information on how States comply with the requirements of 42 CFR part 54a was approved by the Office of Management and Budget (OMB) as part of the Substance Abuse Prevention and Treatment Block Grant FY 2005–2007 annual application and reporting requirements approved under OMB control number 0930–0080.

ANNUAL BURDEN ESTIMATES

42 CFR Citation and purpose	No. of respondents	Responses per respondent	Hours per response	Total hours
Part 54—States Receiving SAPT Block Grants and/or Projects for Assistance in Transition from Homelessness Grants				
Reporting				
54.8(c)(4) Program participant notification to responsible unit of government regarding referrals to alternative service providers	40	4	0.33	53
54.8 (e) Annual report by PATH grantees on activities undertaken to comply with 42 CFR Part 54	56	1	2.00	112
Disclosure				
54.8(b) Program participant notice to program beneficiaries of rights to referral to an alternative service provider:.				
SAPT BG	1,000	275	.05	13,750
PATH	100	170	.05	850
Recordkeeping				
54.6(b) Documentation must be maintained to demonstrate significant burden for program participants under 42 U.S.C. 300x–57 or 42 U.S.C. 290cc–33(a)(2)	50	1	1.00	50
Part 54—Subtotal	1,156			14,815
Part 54a—States, local governments and religious organizations receiving funding under Title V of the PHS Act for substance abuse prevention and treatment services				
Reporting				
54a.8(c)(1)(iv) Program participant notification to State or local government of a referral to an alternative provider	25	4	.083	8
54a(8)(d) Program participant notification to SAMHSA of referrals	20	2	.25	10
Disclosure				
54a.8(b) Program participant notice to program beneficiaries of rights to referral to an alternative service provider	100	275	.05	375
Part 54a—Subtotal	100			1.393
Total	1,256			16,208

Send comments to Summer King, SAMHSA Reports Clearance Officer, OAS, Room 7–1044, 1 Choke Cherry Road, Rockville, MD 20857. Written comments should be received by November 8, 2004.

Dated: September 2, 2004.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–20410 Filed 9–8–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903-N–70

Notice of Proposed Information Collection: Comment Request; HUD Acquisition Regulation (HUDAR)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* November 8, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, AYO, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 800a, Washington, DC 20410; fax: 202–708–3135; e-mail *Wayne_Eddins@HUD.gov* .

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, AYO, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., L'Enfant Plaza Building, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374 Ext. 8072; Fax: (202) 708–3135 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the

accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD Acquisition Regulation (HUDAR) (48 CFR 24).

OMB Control Number, if applicable: 2535–0091.

Description of the need for the information and proposed use: HUDAR is the Department's supplement to the Federal Acquisition Regulation. The information collected required of the public is solely in connection with the procurement process.

Agency form numbers, if applicable: HUD–770.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total numbers of hours needed to prepare the information collection is 41,141, number of respondents is 680, frequency of response is ''on occasion,'' and the hours per response is 19.3 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 1, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E4–2109 Filed 9–8–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–71]

Notice of Proposed Information Collection: Comment Request Affordable Communities Award

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* November 8, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, AYO, Reports Management Officer, Department or Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 800a, Washington, DC 20410; fax: 202–708–3135; e-mail *Wayne_Eddins@HUD.gov* .

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, AYO, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., L'Enfant Plaza Building, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374 Ext. 8072; Fax: (202) 708–3135 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD's Affordable Community Award.

OMB Control Number, if applicable: 2501–0020.

Description of the need for the information and proposed use: HUD's Affordable Communities Award is designed to present an additional incentive to states, local, and tribal governments to become active in removing barriers to affordable housing to the extent feasible. The information collected from the applicants will be used to select the award winners. The information will also provide the initiative with examples of how regulatory barriers are removed and affordable housing is made possible or increased in communities throughout America.

Agency form numbers, if applicable: none.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total numbers of hours needed to prepare the information collection is 2,400, number of respondents is 300, frequency of response is ''on occasion,'' and the hours per response is 8 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 1, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E4–2110 Filed 9–8–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–72]

Notice of Submission of Proposed Information Collection to OMB; Survey of Market Absorption of New Apartment Building

AGENCY: Office of the Chief Information Officer.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This request is for the extension of a currently approved survey used to determine how the supply of rental housing keeps pace with current and future needs.

DATES: *Comments Due Date:* October 12, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to

the proposal by name and/or OMB approval Number (2528–0013) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Survey of Market Absorption of New Apartment Building.

OMB Approval Number: 2528–0013.

Form Numbers: H–31 (Questionnaire), SOMA–1 (Introductory Letter).

Description of the Need for the Information And Its Proposed Use: This survey used to determine how the supply of rental housing keeps pace with current and future needs will now request information on the availability of services in ''assisted living'' buildings.

Frequency of Submission: Monthly.

	Number of respondents	Annual responses	×	Average hours per response	=	Burden hours
Reporting Burden	700	12,000		0.33		3,960

Total Estimated Burden Hours: 3,960.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 1, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E4–2111 Filed 9–8–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Address your comments and suggestions on the information collection requirement by either fax (202) 395–6566 or e-mail (*oira_docket@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1028–0068). Send copies of your comments and suggestions to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192, or e-mail (*jcordyac@usgs.gov*). As required by OMB regulations at CFR 1320.8(d)(1), the U.S. Geoglocial Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;

2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Ferrous Metals Surveys.

Current OMB approval number: 1028–0068.

Abstract: Respondents supply the U.S. Geological Survey with domestic production and consumption data on ferrous and related metals, some of which are considered strategic and critical. This information will be published as chapters in Minerals Yearbooks, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry, education programs, and the general public.

Bureau form number: Various (13 forms).

Frequency: Monthly and annually.

Description of respondents: Producers and Consumers of ferrous and related metals.

Annual Responses: 3,694.

Annual burden hours: 1,978.

Bureau clearance officer: John E. cordyack, Jr., (703) 648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 04–20387 Filed 9–8–04; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Address your comments and suggestions on the information collection requirement by either fax (202) 395–6566 or e-mail (*oira_docket@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1028–0070). Send copies of your comments and suggestions to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192, or e-mail (*jcordyac@usgs.gov*). As required by OMB regulations at CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;

2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Consolidated Consumers' Report.

Current OMB approval number: 1028–0070.

Abstract: Respondents supply the U.S. Geological Survey with domestic consumption data of 12 metals and ferroalloys, some of which are considered strategic and critical. This information will be published as chapters in Minerals Yearbooks, mostly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry, education programs, and the general public.

Bureau form number: 9–4117–MA.

Frequency: Monthly and annually.

Description of respondents: consumers of ferrous and related metals.

Annual responses: 2,278.

Annual burden hours: 1,709.

Bureau clearance officer: John E. Cordyack, Jr., (703) 648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 04–20388 Filed 9–8–04; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–020–1430–NJ]

Notice of Temporary Closure to Public Entry and Use of Lands in the Vicinity of La Bolsa, Rio Arriba County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure.

SUMMARY: Notice is hereby given that the following described public lands in the vicinity of La Bolsa, New Mexico, will be closed to all entry and use, in reference to activities to comply with a Consent Judgment entered in case #03–CIV–1027 in U.S. District Court, for the District of New Mexico. The closure is needed in order to preserve the health and safety of the public by prohibiting their access to the area.

DATES: This emergency closure is effective September 7, 2004.

FOR FURTHER INFORMATION CONTACT: Sam DesGeorges, Field Office Manager, Bureau of Land Management, Taos Field Office, 226 Cruz Alta Road, Taos, New Mexico 87571, or call (505) 758–8851.

SUPPLEMENTARY INFORMATION:

Exemptions: Persons who are exempt from this closure include any Federal, State, or local officer or employee in the scope of their duties, members of any organized rescue or fire-fighting force in performance of an official duty, and any person authorized in writing by the Bureau of Land Management. The land is restricted for all other uses.

The closure is needed in order to preserve the health and safety of the public by prohibiting their access to the area.

This closure will remain in effect for a period of 60 days, beginning on September 7, 2004. The Bureau of Land Management reserves the right to close this area for additional period(s) before or after the indicated dates, as the Bureau of Land Management may deem necessary.

Closure signs will be posted at main entry points and trails in the area indicating the area closed and explaining the reason for the closure. Maps of the closure area and more detailed information are on file at the Taos Field Office. This order affects public lands in Rio Arriba County, New Mexico, thus described:

New Mexico Principal Meridian

T. 23 N., R. 10 E.,
Sec. 20: lot 13—south of State Road 68 only, lot 14, SE¼SE¼, SW¼;
Sec. 21: lots 6–8, S½.

This emergency closure is being established and administered by the Bureau of Land Management. Authority for this action is provided in regulations 43 CFR Subpart 8364—Closures and Restrictions, 8364.1.

Dated: August 20, 2004.

Linda S.C. Rundell,

State Director.

[FR Doc. 04–20484 Filed 9–7–04; 11:17 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1410PN–ARAC]

Notice of Public Meeting, Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held October 14–15, 2004, at the Anchorage Federal Office Building, located at 7th and C Street, beginning at 8:30 a.m. The public comment period will begin at 1 p.m. October 14.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK

99513. Telephone (907) 271–3322 or e-mail *tmcphers@ak.blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics we plan to discuss include:

- Status of land use planning in Alaska.
- National Petroleum Reserve-Alaska integrated activity plans.
- Unauthorized cabins on BLM-administered public lands.
- North Slope Science Initiative.
- Other topics the Council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact BLM.

Dated: August 31, 2004.

Gust C. Panos,

Acting Associate State Director.

[FR Doc. 04–20419 Filed 9–8–04; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–384 and 731–TA–806–808 (Review)]

Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and Russia

AGENCY: International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on certain hot-rolled flat-rolled carbon-quality steel products from Brazil and Japan, the suspended countervailing duty investigation on certain hot-rolled flat-rolled carbon-quality steel products from Brazil, and the suspended antidumping duty investigation on certain hot-rolled flat-rolled carbon-quality steel products from Russia.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews 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 orders on certain hot-rolled flat-rolled carbon-quality steel products from Brazil and Japan, the suspended countervailing duty investigation on certain hot-rolled flat-rolled carbon-quality steel products from Brazil, and/or the suspended antidumping duty investigation on certain hot-rolled flat-rolled carbon-quality steel products from Russia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: Effective September 1, 2004.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202–205–3057), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On August 6, 2004, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (69 Fed. Reg. 52525, August 26, 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 reviews 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 these reviews 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 reviews 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 reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, 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 reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews 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 reviews will be placed in the nonpublic record on February 11, 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 reviews beginning at 9:30 a.m. on March 3, 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 February 23, 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 February 25, 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 reviews 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 February 22, 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 March 14, 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 reviews may submit a written statement of information pertinent to the subject of the reviews on or before March 14, 2005. On April 6, 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 April 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 reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: September 3, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–20428 Filed 9–8–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Pursuant to 28 CFR 50.7, notice is hereby given that on August 20, 2004, a proposed consent decree in *United States and Ventura County Air Pollution Control District* v. *Diversified Panel Systems, Inc.*, Civil Action No. CV 04–7028–DT(JTLx), was lodged with the United States District Court for the Central District of California.

In this action, the United States sought injunctive relief and civil penalties under Section 110 of the Clean Air Act (''CAA'') against Diversified Panel Systems, Inc. (''DPSI''), for violations of the federally enforceable California State Implementation Plan at DPSI's polystyrene block manufacturing and processing facility in Oxnard, California. The consent decree requires DPSI to pay a civil penalty to the United States in the amount of $152,425, and will require DPSI to design and conduct appropriate emissions testing to demonstrate compliance with the emissions standards specified in the Authority to Construct permit issued by the Ventura County Air Pollution Control District (''VCAPCD''), upon which the VCAPCD will issue a Permit to Operate to DPSI for the facility. Quarterly monitoring and reporting will be required after the Permit to Operate is issued. As the permit issuing agency, VCAPCD is a co-plaintiff with the United States in the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and Ventura County Air Pollution Control District* v. *Diversified Panel Systems, Inc.*, D.J. Ref. #90–5–2–1–07680.

The consent decree may be examined at the Office of the United States Attorney, 300 N. Los Angeles Street, Los Angeles, California, and at U.S. EPA Region 9, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, California. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–20472 Filed 9–8–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant To The Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Monarch Greenback, LLC., et al.*, Civil Action No. CV 02–436–S–EJL was lodged on September 1, 2004, with the United States District Court for the District of Idaho. The consent decree requires the defendant Doe Run Resources Corporation to pay $810,000 to the United States in reimbursement of costs incurred by the United States at the Talache Mine Tailings Superfund Site near Atlanta, Idaho.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611 Washington, DC. 20044–7611, and should refer to *United States* v. *Monarch Greenback, LLC, et. al.*, DOJ Ref. #90–5–1–1–4541/1.

The proposed consent decree may be examined at the office of U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* Copies of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting copies please refer to the referenced case and enclose a check in the amount of $13.75 (25 cents per page

reproduction costs), payable to the U.S. Treasury.

Robert Maher,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 04–20471 Filed 9–8–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–249R]

Controlled Substances: Proposed Revised Aggregate Production Quotas for 2004

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed revised 2004 aggregate production quotas.

SUMMARY: This notice proposes revised 2004 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before September 30, 2004.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–249'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCD. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/CCD, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov*. Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator in turn, has redelegated this function to the Deputy Administrator, pursuant to § 0.104 of Title 28 of the Code of Federal Regulations.

On December 15, 2003, DEA published a notice of established initial 2004 aggregate production quotas for certain controlled substances in Schedules I and II (68 FR 69720). This notice stipulated that the DEA would adjust the quotas in early 2004 as provided for in Part 1303 of Title 21 of the Code of Federal Regulations.

The proposed revised 2004 aggregate production quotas represent those quantities of controlled substances in Schedules I and II that may be produced in the United States in 2004 to provide adequate supplies of each substance for: the estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

The proposed revisions are based on a review of 2003 year-end inventories, 2003 disposition data submitted by quota applicants, estimates of the medical needs of the United States, product development, and other information available to the DEA.

Therefore, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to § 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby proposes the following revised 2004 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base:

Basic class	Previously established initial 2004 quotas	Proposed revised 2004 quotas
Schedule I		
2,5-Dimethoxyamphetamine	3,501,000	3,501,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2	2
2,5-Dimethoxy-4-n-propylthiophenethylamine (2C–T-7)	10	10
3-Methylfentanyl	2	2
3-Methylthiofentanyl	2	2
3,4-Methylenedioxyamphetamine (MDA)	11	11
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	5	5
3,4-Methylenedioxymethamphetamine (MDMA)	16	16
3,4,5-Trimethoxyamphetamine	2	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2	2
4-Bromo-2,5-Dimethoxyphenethylamine (2–CB)	2	2
4-Methoxyamphetamine	2	2
4-Methylaminorex	2	2
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2	2
5-Methyoxy-3,4-Methylenedioxyamphetamine	2	2
5-Methoxy-N,N-diisopropyltryptamine (5–MeO-DIPT)	10	10
Acetyl-alpha-methylfentanyl	2	2
Acetyldihydrocodeine	2	2
Acetylmethadol	2	2
Allylprodine	4	4

Basic class	Previously established initial 2004 quotas	Proposed revised 2004 quotas
Alphacetylmethadol	2	2
Alpha-ethyltryptamine	2	2
Alphameprodine	2	2
Alphamethadol	3	3
Alpha-methyltryptamine (AMT)	10	10
Alpha-methylfentanyl	2	2
Alpha-methylthiofentanyl	2	2
Aminorex	2	2
Benzylmorphine	2	2
Betacetylmethadol	2	2
Beta-hydroxy-3-methylfentanyl	2	2
Beta-hydroxyfentanyl	2	2
Betameprodine	2	2
Betamethadol	2	2
Betaprodine	2	2
Bufotenine	2	2
Cathinone	2	2
Codeine-N-oxide	502	502
Diethyltryptamine	2	2
Difenoxin	9,000	8,000
Dihydromorphine	1,101,000	1,101,000
Dimethyltryptamine	3	3
Gamma-hydroxybutyric acid	10,000,000	8,000,000
Heroin	5	5
Hydromorphinol	2	2
Hydroxypethidine	2	2
Lysergic acid diethylamide (LSD)	61	61
Marihuana	840,000	840,020
Mescaline	2	2
Methaqualone	5	5
Methcathinone	4	4
Methyldihydromorphine	2	2
Morphine-N-oxide	502	502
N,N-Dimethylamphetamine	2	2
N-Ethyl-1-Phenylcyclohexylamine (PCE)	5	5
N-Ethylamphetamine	7	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2	2
Noracymethadol	2	2
Norlevorphanol	52	52
Normethadone	2	2
Normorphine	12	12
Para-fluorofentanyl	2	2
Phenomorphan	2	2
Pholcodine	2	2
Propiram	210,000	210,000
Psilocybin	2	2
Psilocyn	2	2
Tetrahydrocannabinols	176,000	176,000
Thiofentanyl	2	2
Trimeperidine	2	2
Schedule II		
1-Phenylcyclohexylamine	2	2
1-Piperidinocyclohexanecarbonitrile (PCC)	10	10
Alfentanil	2,000	2,000
Alphaprodine	2	2
Amobarbital	3	3
Amphetamine	10,987,000	12,700,000
Cocaine	186,000	200,000
Codeine (for sale)	41,341,000	41,341,000
Codeine (for conversion)	43,559,000	48,000,000
Dextropropoxyphene	167,365,000	167,365,000
Dihydrocodeine	776,000	776,000
Diphenoxylate	716,000	836,000
Ecgonine	38,000	38,000
Ethylmorphine	2	2
Fentanyl	970,000	1,225,000
Glutethimide	2	2
Hydrocodone (for sale)	30,622,000	34,000,000
Hydrocodone (for conversion)	1,500,000	1,500,000
Hydromorphone	1,651,000	1,651,000

Basic class	Previously established initial 2004 quotas	Proposed revised 2004 quotas
Isomethadone	2	2
Levo-alphacetylmethadol (LAAM)	2	2
Levomethorphan	2	2
Levorphanol	15,000	15,000
Meperidine	9,753,000	9,753,000
Metazocine	1	1
Methadone (for sale)	14,057,000	14,720,000
Methadone Intermediate	18,296,000	18,296,000
Methamphetamine	2,275,000	2,180,000
[675,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,475,000 grams for methamphetamine mostly for conversion to a Schedule III product; and 30,000 grams for methamphetamine (for sale)]		
Methylphenidate	23,726,000	27,428,000
Morphine (for sale)	21,800,000	25,000,000
Morphine (for conversion)	110,774,000	110,774,000
Nabilone	2	2
Noroxymorphone (for sale)	99,000	99,000
Noroxymorphone (for conversion)	3,800,000	3,800,000
Opium	1,000,000	1,300,000
Oxycodone (for sale)	41,606,000	49,200,000
Oxycodone (for conversion)	920,000	920,000
Oxymorphone	534,000	534,000
Pentobarbital	18,251,000	18,251,000
Phencyclidine	2,060	2,060
Phenmetrazine	2	2
Phenylacetone	11,000,000	11,000,000
Racemethorphan	2	2
Secobarbital	1,000	2
Sufentanil	4,000	4,000
Thebaine	59,437,000	72,400,000

The Deputy Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in § 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations remain at zero.

All interested persons are invited to submit their comments in writing or electronically regarding this proposal following the procedures in the **ADDRESSES** section of this document. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing as per 21 CFR 1303.13(c) and 1303.32.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will not have a significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $113,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: September 1, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–20369 Filed 9–8–04; 8:45 am]

BILLING CODE 4410–09–P

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

TIME AND DATE: 2 p.m., September 27, 2004.

PLACE: Mississippi River Commission Headquarters Building, 1400 Walnut Street, Vicksburg, MS.

STATUS: Open to the public for observation, but not for participation.

MATTERS TO BE CONSIDERED: The Commission will consider the Bayou Sorrel Lock, Louisiana, Final Feasibility Report and Environmental Impact Statement.

CONTACT PERSON FOR MORE INFORMATION: Mr. Stephen Gambrell, telephone 601–634–5766.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–20522 Filed 9–7–04; 1:22 pm]

BILLING CODE 3710–6X–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08794]

Notice of License Termination and Release of Molycorp's Property In York, PA for Unrestricted Release

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license termination and site release for unrestricted use.

FOR FURTHER INFORMATION CONTACT: Thomas G. McLaughlin, Materials Decommissioning Section, Division of Waste Management and Environmental Protection, NRC, Washington, DC 20555; telephone (301) 415–5869; fax (301) 415–5397; or e-mail at *tgm@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the Nuclear Regulatory Commission (NRC) is providing notice that it is terminating license SMB–1408 for Molycorp, Inc. (Molycorp or Licensee), and releasing the Molycorp property in York, PA, for unrestricted use. The Licensee's request for an amendment to authorize decommissioning of its former rare earth processing facility in York, PA, was previously noticed in the **Federal Register** on May 13, 1996 (61 FR 22075) with a notice of an opportunity to request a hearing.

Molycorp provided a final radiological status survey and performed an on-site and off-site dose analysis to demonstrate the site meets the license termination criteria in Subpart E of 10 CFR part 20. In addition, NRC staff conducted independent measurements of residual contamination remaining at the site.

The NRC staff has evaluated the Molycorp request, has reviewed the results of the final radiological survey, has performed confirmatory measurements throughout the site property, and has determined that the site cleanup meets the Site Decommissioning Management Plan criteria as well as the unrestricted release dose criteria in 10 CFR 20.1402. The Commission has concluded that the site is suitable for release for unrestricted use, and has terminated the license for the Molycorp York, PA property. The staff prepared a Safety Evaluation Report (SER) to support the proposed action.

II. Further Information

In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' details with respect to this action, including the SER, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the document ''Release of Molycorp York Pennsylvania Property and Termination of License (License No. SMB–1408)'' is ADAMS No. ML042310150. If you do not have access to ADAMS or if there are problems in accessing a document located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

For the Nuclear Regulatory Commission.

Dated at NRC, Rockville, MD, this 2nd day of September, 2004.

Daniel M. Gillen,

Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–20391 Filed 9–8–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Requirements for Steam Generator Tube Inspections

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter (GL) 2004–01 to all holders of operating licenses for pressurized-water reactors (PWRs) except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel. The generic letter:

(1) Advises addressees that the NRC's interpretation of the technical specification (TS) requirements in conjunction with 10 CFR Part 50, Appendix B, raises questions as to whether certain licensee steam generator (SG) tube inspection practices ensure compliance with these requirements;

(2) Requests that addressees submit a description of the tube inspections performed at their plants, including an assessment of whether these inspections ensure compliance with the TS requirements in conjunction with 10 CFR Part 50, Appendix B;

(3) Requests that addressees who conclude they are not in compliance with the SG tube inspection requirements contained in their TS in conjunction with 10 CFR Part 50, Appendix B, propose plans for coming into compliance with these requirements; and

(4) Requests that addressees submit a tube structural and leakage integrity safety assessment that addresses any differences between their practices and the NRC's position regarding the requirements of the TS in conjunction with 10 CFR Part 50, Appendix B. A safety assessment should be submitted for all areas of the tube required to be inspected by the TS, where flaws have the potential to exist and inspection techniques capable of detecting these flaws are not being used. This assessment should include an evaluation of whether the inspection practices rely on an acceptance standard different from the TS acceptance standards and whether the technical basis for these inspection practices constitutes a change to the ''method of evaluation'' (as defined in 10 CFR 50.59) for establishing the structural and leakage integrity of the tube-to-tubesheet joint.

DATES: The generic letter was issued on August 30, 2004.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Paul Klein, NRR, (301) 415–4030; e-mail: *pak@nrc.gov* or Maitri Banerjee, NRR; (301) 415–2277; e-mail: *mxb@nrc.gov.*

SUPPLEMENTARY INFORMATION: Generic Letter 2004–01 may be examined and/or copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and is accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* The ADAMS Accession No. for the generic letter ML042370766.

If you do not have access to ADAMS or if there are problems in accessing documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at (301) 415–4737 or 1–800–397–4209, or by e-mail to *pdr@nrc.gov.*

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 1st day of September 2004.

Francis M. Costello,

Acting Chief, Reactor Operations Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–20390 Filed 9–8–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide: Issuance, Availability, Workshop

The U.S. Nuclear Regulatory Commission (NRC) has issued a draft new appendix to a guide in its *Regulatory Guide* series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

The NRC has issued for comment draft Regulatory Guide DG–1138, which is a preliminary draft of the staff's regulatory position on ANSI/ANS 58.21–2003, ''External Events PRA Methodology Standard.'' The staff's position is documented in Appendix C, ''NRC Staff Regulatory Position on ANS External Hazards PRA Standard'' to Regulatory Guide 1.200, ''An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities.'' Regulatory Guide 1.200 was issued for trial use in February 2004 and did not contain Appendix C. The NRC staff is only soliciting comments on Appendix C to RG 1.200; Appendix C has not been issued for use. It is the staff's intent to issue a draft Revision 1 to RG 1.200 with Appendix C for public review and comment before issuing Revision 1 to RG 1.200 as final for use in mid-2005.

The NRC staff is soliciting comments on draft Appendix C. Comments may be accompanied by relevant information or supporting data. Please mention DG–1138 in the subject line of your comments. Comments on regulatory guides submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments. You may submit comments by any one of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

E-mail comments to: NRCREP@nrc.gov. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

Hand deliver comments to: Rules and Directives Branch, Office of Administration, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for information about the draft Appendix C may be directed to Mr. A. Singh at (301) 415–0250; e-mail *axs3@NRC.GOV.*

Comments will be most helpful if received by **October 29, 2004**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given for comments on this draft Appendix C, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

The NRC intends to conduct a workshop on November 9, 2004, to be held in the auditorium at NRC headquarters, 11545 Rockville Pike, Rockville, Maryland, (the agenda will be announced in a future public notice), to discuss and explain the staff's position on the ANS standard, and the staff's response to the public comments received. In the workshop, the staff will discuss each public comment and the basis for the staff's position, and answer questions.

Electronic copies of the draft Appendix C and RG 1.200 are available on the NRC's Web site *http://www.nrc.gov* in the ''Reference Library'' under ''Regulatory Guides''. Electronic copies are also available in NRC's Public Electronic Reading Room (ADAMS System) at the same Web site; draft Appendix C is under ADAMS Accession Number ML042430314. Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; e-mail *PDR@NRC.GOV.* Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *DISTRIBUTION@NRC.GOV*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 31st day of August 2004.

For the Nuclear Regulatory Commission.

Charles E. Ader,

Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 04–20389 Filed 9–8–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Regulation S: OMB Control No. 3235–0357; SEC File No. 270–315.

Rule 13e–3 (Schedule 13E–3): OMB Control No. 3235–0007; SEC File No. 270–1.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Regulation S (OMB Control No. 3235–0357; SEC File No. 270–315) includes rules governing offers and sales of securities made outside the United States without registration under the Securities Act of 1933. The purpose of Regulation S is to provide clarification of the extent to which Section 5 of the Securities Act applies to sales and re-sales of securities outside of the United States. Regulation S is assigned one burden hour for administrative convenience.

Rule 13e–3 and Schedule 13E–3 (OMB Control No. 3235–0007; SEC File No. 270–1)—Rule 13e–3 prescribes the filing, disclosure and dissemination requirements in connection with an on going private transaction by an issuer or an affiliate. Schedule 13E–3 provides shareholders and the marketplace with information concerning on going private transactions that is important in determining how to respond to such transactions. The information collected permits verification of compliance with securities laws requirements and ensures the public availability and dissemination of the collected information. Approximately 600 issuers file Schedule 13E–3 annually and it takes approximately 137.25 hours per response for a total of 82,350 annual burden hours. It is estimated that 25% of the 82,350 total burden hours (20,588 burden hours) is prepared by the company. The remaining 75% of the total burden is attributed to outside cost.

Written comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Dated: August 30, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–20374 Filed 9–8–04; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form 3; OMB Control No. 3235–0104; SEC File No. 270–125

Form 4; OMB Control No. 3235–0287; SEC File No. 270–126

Form 5; OMB Control No. 3235–0362; SEC File No. 270–323.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Exchange Act Forms 3, 4 and 5 are filed by insiders of public companies that have a class of securities registered under Section 12 of the Exchange Act. Form 3 is an initial statement beneficial ownership of securities, Form 4 is a statement of changes in beneficial ownership of securities and Form 5 is an annual statement of beneficial ownership of securities. Approximately 29,000 insiders file Form 3 annually and it takes approximately .50 hours to prepare for a total of 14,500 annual burden hours. Approximately 225,000 insiders file Form 4 annually and it takes approximately .50 hours to prepare for a total of 112,500 annual burden hours. Approximately 12,000 insiders file Form 5 annually and it takes approximately one hour to prepare for a total of 12,000 annual burden hours. Written comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

Dated: August 31, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2105 Filed 9–8–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form BDN/Rule 15b11–1; SEC File No. 270–498; OMB Control No. 3235–0556.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 15b11–1 and Form BD–N (17 CFR 249.501b) serve as the form of notice for futures commission merchants and introducing brokers that register as broker-dealers by notice pursuant to Section 15(b)(11)(A) of the Exchange Act. Specifically, the form requires a broker-dealer registering by notice to indicate whether it is filing a notice registration to conduct a securities business in security futures products and if so, that it satisfies the statutory conditions for notice registration.

The total annual burden imposed by Rule 15b11–1 and Form BD–N is approximately 36 hours, based on

approximately 79 responses (65 initial filings + 14 amendments). Each initial filing requires approximately 30 minutes to complete and each amendment requires approximately 15 minutes to complete. There is no annual cost burden.

The Commission will use the information collected pursuant to Rule 15b11–1 to elicit basic identification information as well as information that will allow the Commission to ensure that the futures commission merchants and introducing brokers meet the statutory conditions to register by notice pursuant to Section 15(b)(11) of the Exchange Act. This information will assist the Commission in fulfilling its regulatory obligations.

Completing and filing Form BD–N is mandatory in order for an eligible futures commission merchant or introducing broker to engage in notice-registered broker-dealer activity. Compliance with Rule 15b11–1 does not involve the collection of confidential information. Please note that 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 control number.

General comments regarding the above information should be directed to the following persons: (a) Desk Officer for the Securities and Exchange Commission by sending an e-mail to: *David_Rostker@omb.eop.gov*, and (b) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 27, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2106 Filed 9–8–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 13, 2004:

A closed meeting will be held on Tuesday, September 14, 2004, at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 14, 2004, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; An adjudicatory matter; and Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: September 7, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–20559 Filed 9–7–04; 3:57 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50307; File No. SR–Amex–2004–75]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Revisions to Amex Rule 154

September 2, 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 30, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 154. The text of the proposed rule change is set forth below in its entirety. Proposed new language is in *italics*.

* * * * *

Orders Left With Specialist

Rule 154 (*a*) No member or member organization shall place with a specialist, acting as broker, any order to effect on the Exchange any transaction except at the market or at a limited price.

(b) A specialist shall not charge a commission for handling an order (or portion thereof) that is not executed, an order that is executed on an opening or reopening, or an order (or portion thereof) that is executed against the specialist as principal (see Amex Rule 152(c)). Without limiting the foregoing, a specialist also shall not charge a commission for the execution of an off floor order delivered to the specialist through the Exchange's electronic order routing systems except in the following cases:

(i) A limit order executed more than two minutes from the time of receipt on the book. In the case of a limit order partially executed in two minutes or less and partially executed in more than two minutes, a specialist shall not charge a commission for handling the portion of the order executed in two minutes or less.

(ii) An on close (market or limit) order.

(iii) A tick sensitive (market or limit) order that is not executed upon receipt in the book by the Exchange's automatic execution facilities.

(iv) A non-regular way settlement (market or limit) order.

(v) A stop or stop limit order.

(vi) A market or marketable limit order stopped at one price and executed at a better price. In the case of an order stopped at one price and partially executed at a better price, a specialist shall not charge a commission for handling the portion of the order executed at the stop price.

(vii) A fill-or-kill, immediate-or-cancel or all-or-none order that is not executed upon receipt in the book by the Exchange's automatic execution facilities.

(viii) An order for the account of a competing market maker.

For purposes of this paragraph (b), in all instances where an order received by

the specialist is canceled and replaced with another order, the replacement shall be deemed to be a new order.

Commentary * * *. .01 through .15 No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Exchange, specialists traditionally charge a commission only for orders that they execute and do not bill for orders that they hold, but do not execute. For example, specialists do not charge a commission for ''day'' orders that expire unfilled or orders that are cancelled prior to execution. In addition, the Exchange has a policy (available on its AmexTrader Web site),[3] which describes the circumstances under which specialists may charge members and member organizations a commission for executing orders. In general, ''routine'' orders are not subject to specialist commissions while orders that require special handling or for which the specialist provides a service may be subject to a commission. Thus, specialists on the Amex may (but are not required to) bill for limit orders that remain on the book for more than two minutes, market on close or limit on close orders, tick sensitive orders (*e.g.*, an order to sell short in a security subject to the Commission's ''tick-test''), orders for non-regular way settlement, stop or stop limit orders, orders stopped at one price and executed at a better price, and fill-or-kill, immediate-or-cancel and all-or-none orders.[4] By rule, specialists may not charge a commission where they take the other side of the trade as principal.[5]

One Amex specialist currently charges firms a commission for orders that are cancelled prior to execution. This specialist recently distributed a memorandum dated August 23, 2004, to ''all Broker-Dealers and Firms'' to advise that, commencing September 1, 2004, it would begin charging a commission for option and ETF orders that expire without an execution. Thus, for example, this specialist would charge a commission for orders for options that expire and day orders that expire unexecuted. The memorandum further states that the specialist would charge a commission for option and ETF orders, ''without regard to whether they are market or limit orders, and without regard to whether they are immediately executed upon receipt or are booked.'' According to the Exchange, among other consequences, this change in commission billing practice would result in the specialist charging commissions for orders that are executed automatically by the Exchange's systems.

The Exchange proposes to adopt a rule that would prohibit specialists from charging a commission for orders, or portions of orders, that are not executed. This would include, but is not limited to, a prohibition on specialist commissions for order cancellations and orders that expire due to the passage of time.

The Exchange also proposes to codify its policies regarding situations where specialists may charge a commission for trades that are executed in whole or part. Proposed Amex Rule 154(b) would prohibit specialists from charging a commission on off floor orders that are electronically delivered to the specialist except in cases of orders that require special handling by the specialist or the specialist provides a service. Thus, under the proposed rule, specialists would be allowed to bill a commission for a limit order that remains on the book for more than two minutes, a market or limit on close order, a tick sensitive order that is not executed upon receipt in the book by the Exchange's automatic execution facilities, an order for non-regular way settlement, a stop or stop limit order, an order stopped at one price and executed at a better price, a fill-or-kill, immediate-or-cancel or all-or-none order that is not executed upon receipt in the book by the Exchange's automatic execution facilities, and an order for the account of a competing market maker. Other off floor electronic delivered orders, orders where the specialist is the ''contra'' party on the execution, and orders executed on an opening or reopening would not be ''billable.''

The proposed rule would prohibit specialists from billing for electronically delivered orders that are executed automatically by the Exchange's order processing facilities upon receipt in the book. Amex Rule 152(c) already prohibits specialists from charging a commission where they act as principal on a trade, so the Exchange's rules would be violated if a specialist were to bill for an automatically executed trade where the specialist is the contra-side. If, on the other hand, the contra side were some other person, *e.g.*, a registered option trader or a limit order on the book, the Exchange believes that it is hard to see what service the specialist has performed to earn a commission when the order is executed against this other interest when it first arrives in the book. The proposed rule only would allow the specialist to charge a commission for an order that is automatically executed where (i) a limit order has been on the book for more than two minutes, and (ii) the order is automatically executed against an incoming order or some trading interest other than that of the specialist. The Exchange believes that it may be appropriate for the specialist to charge a commission in these circumstances because the specialist has assumed responsibility for the proper execution of the order.

Specialist commissions increase the cost of doing business on the Exchange. The Exchange believes that these increased costs weaken the Exchange's competitive position relative to other markets and harm investors as other markets do not need to compete as aggressively with the Exchange to cut their prices to investors. The Exchange, consequently, believes that the proposed rule would benefit investors if implemented.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(5) of the Act[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect

[3] *See http://www.amex.com/amextrader/tdrInfo/fees/tdrInfo Fees pg6.html.*

[4] According to the Exchange, the NYSE's rules are similar to the Exchange's policy in this area. NYSE Rule 123B(b)(1) and Supplementary Material .10 generally prohibit NYSE specialists from charging a commission on orders sent to them electronically unless the order remains on the book for more than five minutes.

[5] Amex Rule 152(c).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with Section 11(A)(a)(1)(C)(i) of the Act [8] in that it is designed to promote the economically efficient execution of securities transactions by reducing the cost of such transactions to investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes 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. The Exchange, in fact, believes that the proposed rule change may enhance competition by possibly reducing the cost of doing business on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 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-2004–75 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–2004–75. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–75 and should be submitted on or before September 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2108 Filed 9–8–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78k–1(a)(1)(C)(i).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50308; File No. SR–Amex–2004–59]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Reduction in Options Transaction Fees

September 2, 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 July 30, 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 reduce aggregate options transaction fees for specialists and registered options traders from $0.30 per contract side to $0.25 per contract side. 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.

[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).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex imposes transaction charges for transactions in equity options executed on the Exchange by Exchange specialists and Exchange registered options traders (''ROTs''). The current charges for Exchange specialists and ROTs in equity options are $0.30 per contract side, consisting of an options transaction fee of $0.20, an options comparison fee of $0.05 and an options floor brokerage fee of $0.05. The Exchange proposes to reduce the aggregate equity option transaction fee for Exchange specialists and ROTs from the current level of $0.30 per contract side to $0.25 per contract side effective August 1, 2004. Non-member market makers, *i.e.*, market makers registered in the same option class on another option exchange, will continue to be charged the current transaction fee of $0.30 per contract side. Under the proposed revisions to the Options Fee Schedule, transaction fees charged to non-member market makers for executing options transactions on the Exchange will be separately identified.[5] The new aggregate equity option transaction fee for Exchange specialists and ROTs will consist of an options transaction fee of $0.15 per contract side, an options comparison fee of $0.05 per contract side, and options floor brokerage fee of $0.05 per contract side.

In conjunction with the proposed reduction in the aggregate equity option transaction fee for Exchange specialists and ROTs, the fee reductions in the Options Fee Schedule for cabinet trades (''Cabinet Trades'') and reversals and conversions, dividend spreads, box spreads, and butterfly spreads (''Spread Trades'') are terminated for Exchange specialists, ROTs, and member broker-dealers.[6] Effective August 1, 2004, the fee reductions applicable to Exchange specialists, ROTs and member broker-dealers for QQQ options in connection with Cabinet Trades and Spread Trades do not apply.

The Exchange believes that the reduction in equity options transaction fees will benefit the Exchange by providing greater incentive to Exchange specialists and ROTs to competitively quote their markets in comparison to the markets made by other options exchanges. In addition, the Exchange also believes that the reduction in equity option transaction fees will help maintain the existing floor operations of member firms at the Amex.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(4) of the Act,[8] 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[9] and subparagraph (f)(2) of Rule 19b–4 thereunder,[10] 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–2004–59 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–2004–59. 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 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–2004–59 and should be submitted on or before September 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2132 Filed 9–8–04; 8:45 am]

BILLING CODE 8010–01–P

[5] Currently, non-member market makers are subject to transaction fees applicable to Exchange specialists and ROTs as set forth in the Options Fee Schedule. Therefore, for clarity, the Exchange proposes to separately set forth transaction fees applicable to non-member market makers in the revised Options Fee Schedule.

[6] *See* Securities Exchange Act Release No. 49763 (May 24, 2004), 69 FR 30967 (June 1, 2004).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(a)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50302; File No. SR–BSE–2004–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Fees for Market Makers on the Boston Options Exchange Facility

September 1, 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 25, 2004, the Boston Stock Exchange (''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 Exchange. The proposed rule change has been filed by the Exchange as establishing or changing a due, fee, or other charge under Section 19(b)(3)(A)(ii) 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 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fee Schedule for the Boston Options Exchange[5] to allow the Exchange to charge a minimum activity charge (''MAC'') to Market Maker firms for options classes that have been trading for less than six months. Currently, the monthly MAC is based on the average daily trading volume for the preceding six month period. The proposed rule change would provide that for classes that have been trading for less than six months, the class would be placed in a MAC category based on the average daily trading volume for the preceding calendar months in which the class was trading for the entire calendar month. The text of the proposed rule change appears below. New text is in *italics*.

BOSTON OPTIONS EXCHANGE FACILITY

FEE SCHEDULE

* * * * *

Sec. 3 Market Maker Trading Fees

a. No change.

b. Minimum Activity Charge (''MAC'')

* * * * *

1. MAC ''Levels''

a. For Classes that have been trading for at least six calendar months

The table below provides the MAC for each of the six ''categories'' of options classes listed by BOX. The category for each class is determined by its total trading volume across all U.S. options exchanges as determined by OCC data. The classifications will be adjusted at least twice annually (in January and July, based on the average daily volume for the preceding six month period).

Class category	OCC average daily volume (number of contracts)	MAC per market maker per appointment per month
A	>100,000	$15,000
B	50,000 to 99,999	3,000
C	25,000 to 49,999	2,000
D	10,000 to 24,999	750
E	5,000 to 9,999	250
F	Less than 5,000	100

b. For Classes that have been trading for less than six calendar months

A MAC will not be applied until a class has been trading for a full calendar month. After a class has been trading for a full calendar month, the MAC category for such class will be determined, applying the criteria set forth in the table above, based on the average daily volume for such full calendar month across all U.S. options exchanges as determined by OCC data. The classification will be adjusted at the beginning of each new calendar month thereafter based on the average daily trading volume for the previous calendar months in which the options class was traded for the entire month, until the class has been trading for six full calendar months. Thereafter, the classification will be adjusted at least twice annually (in January and July, based on the average daily volume for the preceding six month period) as set forth in subsection 1.a. above. Until an options class is placed in a MAC category, only per contract trade execution fees will apply to trades in that class.

2. MAC ''Adjustments''

No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 purpose of the proposed rule change is to allow the Exchange to charge a MAC to Market Maker firms for options classes that have been trading for less than six months. Currently, the monthly MAC is based on the average daily trading volume for the preceding six month period. The proposed rule change would provide that for classes that have been trading for less than six months, the class would be placed in a MAC category based on the average daily trading volume (as determined by data from the Options Clearing Corporation) for the preceding calendar months in which the class was trading for the entire calendar month. The classification would be adjusted at the beginning of each new calendar month

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *http://www.bostonoptions.com/pdf/FeeFilingSECofficial.pdf* (Accessed Sept. 1, 2004.)

thereafter based on the average daily trading volume for the previous calendar months in which the class was trading for the entire calendar month, until the class has been trading for six full calendar months. Thereafter, the classification would be adjusted at least twice annually (in January and July, based on the average daily volume for the preceding six month period), as the rule currently provides. Until an options class was placed in a MAC category, only per contract trade execution fees would apply to trades in that class.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members.

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 upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder[9] because it changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2004–38 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–2004–38. 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 such filing also will 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 submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2004–38 and should be submitted on or before September 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2107 Filed 9–8–04; 8:45 am]

BILLING CODE 8010–01–P

[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).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50304; File No. SR–NASD–2004–114]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Fees for Depth of Book Data in Exchange-Listed Securities in the Nasdaq Market Center

September 1, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 26, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On August 24, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to establish a monthly per-controlled device fee for depth of book information for exchange-listed securities in the Nasdaq Market Center. Nasdaq intends to implement the fee on October 1, 2004. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

4707. Entry and Display of Quotes/Orders

(a) through (e) No Change.

(f) [IM Prime—''IM Prime''] *Open View—''Open View''* is a separate data feed that Nasdaq will make available for a fee that is approved by the Securities and Exchange Commission. This separate data feed will display with attribution to ITS/CAES Market Makers' MPIDs all Attributable Quotes/Orders on both the bid and offer side of the market for the price levels that are

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 23, 2004 (''Amendment No. 1''). Amendment No. 1 replaces the original proposed rule change in its entirety.

disseminated in the Nasdaq Order Display Facility for ITS Securities.

* * * * *

7010. Charges for Services and Equipment

(a)–(p) No change.

(q) Nasdaq Data Entitlement Packages

(1) through (7) No Change.

(8) Open View

The Open View entitlement package consists of all individual Nasdaq Market Center participant orders and quotes in exchange-listed securities in the system. There shall be a charge of $6 per month per controlled device of Open View.

(r)–(u) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With the introduction of the Nasdaq Market Center as a platform to trade exchange-listed securities, Nasdaq will have the ability to collect and disseminate multiple levels of firm quotes/orders in those securities to market participants. This data includes all exchange-listed securities quoted through the Nasdaq Market Center. Nasdaq's proposal establishes a $6 monthly per-controlled device [4] fee for such real-time ''depth of book'' information, which is known as ''Open View.'' [5] In addition, Nasdaq proposes to amend NASD Rule 4707(f) to change the name of the ''IM Prime'' data feed to ''Open View.''

Nasdaq states that it chose the initial $6 monthly fee amount based on anticipated message traffic through the new data feed in relation to the message traffic levels and prices for similar data services already in operation.[6] As noted above, Nasdaq intends to implement the fee on October 1, 2004. The $6 fee will apply to vendors and subscribers that access the data through either a market data vendor or any internal data dissemination system operated by a broker-dealer.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act [7] in general, and Section 15A(b)(5) of the Act [8] in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. As previously noted, Nasdaq chose the initial $6 monthly fee amount based on anticipated message traffic through the new data feed in relation to the message traffic amounts and prices for similar data services available to market participants that are already in operation.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning 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 comments form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2004–114 on the subject line.

Paper comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–114. 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 such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–114 and should be submitted on or before September 30, 2004.

[4] Controlled device is defined in NASD Rule 7010(q)(6)(A).

[5] ''Open View'' is part of the ViewSuite package of data entitlements provided under NASD Rule 7010(q).

[6] *See e.g.,* Securities Exchange Act Release No. 46534 (September 23, 2002), 67 FR 61368 (September 30, 2002) (approving SR–NASD 2002–86 and establishing a $6 fee for similar listed quotation data in the event Nasdaq becomes a national securities exchange).

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–20375 Filed 9–8–04; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50305; File No. SR-NASD–2004–101]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change to Provide a Monthly Flat Fee for the Internal Distribution of PostData as an Alternative to the Monthly Per-Subscriber Fees Presently Available Under NASD Rule 7010(s)

September 1, 2004.

On June 28, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide a monthly flat fee for the internal distribution of PostData as an alternative to the monthly per-subscriber fees presently available under NASD Rule 7010(s). The proposed rule change was published for notice and comment in the **Federal Register** on July 29, 2004.[3] The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[4] and, in particular, the requirements of Section 15A(b)(5) of the Act,[5] which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which NASD operates or controls.

The Commission notes that PostData is currently operating as a pilot. The Commission expects that Nasdaq will evaluate the fees it has established for PostData, and provide the Commission with a report of its findings before the expiration of, or extension of, the pilot period.[6]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[7], that the proposed rule change (SR-NASD–2004–101) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–20376 Filed 9–8–04; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50068 (July 23, 2004), 69 FR 45358.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–3(b)(6).

[6] *See* Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002) (SR–NASD–99–12).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–(a)(12).

DEPARTMENT OF TRANSPORTATION

Proposed Collection; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on June 24, 2004 (69 FR 35421).

DATES: Comments must be submitted on or before October 12, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On June 24, 2004, FRA published a 60-day notice in the **Federal Register** soliciting comment on this ICR that the agency was seeking OMB approval. 69 FR 35421. FRA received no comments after issuing this notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirement (ICR) and the expected burden. The revised requirement is being submitted for clearance by OMB as required by the PRA.

Title: Railroad Communications (Formerly Radio Standards and Procedures).

OMB Control Number: 2130–0524.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Abstract: The Federal Railroad Administration (FRA) amended its radio standards and procedures to promote compliance by making the regulations more flexible; to require wireless communications devices, including radios, for specified classifications of railroad operations and roadway

workers; and to re-title this part to reflect its coverage of other means of wireless communications such as cellular telephones, data radio terminals, and other forms of wireless communications to convey emergency and need-to-know information. The new rule established safe, uniform procedures covering the use of radio and other wireless communications within the railroad industry.

Annual Estimated Burden Hours: 255,371.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: FRA Desk Officer.

Comments Are Invited on the Following: 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 estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on September 2, 2004.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 04–20458 Filed 9–8–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–18947]

Notice of Receipt of Petition for Decision That Nonconforming 2003–2004 BMW 5 Series Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2003–2004 BMW 5 series passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2003–2004 BMW 5 series passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is October 12, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 am to 5 pm.) Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202) 366–3151.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies of Baltimore, Maryland (''JK'') (Registered Importer 90–006) has petitioned NHTSA to decide whether nonconforming 2003–2004 BMW 5 series passenger cars are eligible for importation into the United States. The vehicles which JK believes are substantially similar are 2003–2004 BMW 5 series passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2003–2004 BMW 5 series passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

JK submitted information with its petition intended to demonstrate that non-U.S. certified 2003–2004 BMW 5 series passenger cars as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2003–2004 BMW 5 series passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 124 *Accelerator Control Systems,* 135 *Passenger Car Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* 301 *Fuel System Integrity,* 302 *Flammability of Interior Materials,* and 401 *Interior Trunk Release.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Installation of entire U.S.-model instrument cluster. U.S. version software must also be downloaded to ensure compliant operation of the U.S.-model instrument cluster.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Inspection of all vehicles and replacement of the following non U.S.-model components with U.S.-model components on vehicles not already so equipped: (a) Headlamp assemblies that incorporate front side marker lamps; (b) taillamp assemblies that incorporate rear side marker lamps; (c) high-mounted rear stoplamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Installation of U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of the mirror.

Standard No. 114 *Theft Protection:* Installation of U.S. version software to ensure that the vehicle conforms to the standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* Installation of U.S. version software to ensure that the vehicle conforms to the standard.

Standard No. 208 *Occupant Crash Protection:* Installation of a warning buzzer which is wired to the seat belt latch to ensure that the seat belt warning system activates in the proper manner.

The petitioner states that the automatic restraint system installed in these vehicles consists of dual front airbags, and that the vehicles have combination lap and shoulder belts at the front and rear outboard seating positions. These manual systems are automatic, self-tensioning, and are released by means of a single red push-button.

The petitioner also states that U.S. version software must be installed to ensure that the vehicle conforms to the requirements of the Theft Prevention Standard at 49 CFR part 541.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.). It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 04–20459 Filed 9–8–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Notice of Funds Availability (NOFA) Inviting Applications for the FY 2005 and FY 2006 Funding Rounds of the Bank Enterprise Award (BEA) Program

Announcement Type: Initial announcement of funding opportunity.

Catalog of Federal Domestic Assistance (CDFA) Number: 21.021.

Dates: Applications for the FY 2005 funding round must be received by 5 p.m. e.s.t. on February 14, 2005 and applications for the FY 2006 funding round must be received by 5 p.m. e.s.t. on February 14, 2006. Applications must meet all eligibility and other requirements and deadlines, as applicable, set forth in this NOFA. Applications received after 5 p.m. e.s.t. on the applicable deadline will be rejected and returned to the sender.

Executive Summary: This NOFA is issued in connection with the FY 2005 and FY 2006 funding rounds of the BEA Program. Through the BEA Program, the Community Development Financial Institutions Fund (the Fund) encourages Insured Depository Institutions to increase their levels of loans, investments, services, and technical assistance within Distressed Communities, and financial assistance to Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance, during a specified period.

I. Funding Opportunity Description

A. Baseline Period and Assessment Period Dates

A BEA Program award is based on an Applicant's increases in Qualified Activities from the Baseline Period to the Assessment Period. For the FY 2005 funding round, the Baseline Period is calendar year 2003 (January 1, 2003 through December 31, 2003), and the Assessment Period is calendar year 2004 (January 1, 2004 through December 31, 2004). For the FY 2006 funding round, the Baseline Period is calendar year 2004 (January 1, 2004 through December 31, 2004), and the Assessment Period is calendar year 2005 (January 1, 2005 through December 31, 2005).

B. Program Regulations

The regulations governing the BEA Program can be found at 12 CFR part 1806 (the Interim Rule) and provide guidance on evaluation criteria and other requirements of the BEA Program. The Fund encourages Applicants to review the Interim Rule. Detailed application content requirements are found in the application related to this NOFA. Each capitalized term in this NOFA is more fully defined either in the Interim Rule or the application.

C. Qualified Activities

Qualified Activities are defined in the Interim Rule to include CDFI Related Activities, Distressed Community Financing Activities, and Service Activities (12 CFR 1806.103(mm)). CDFI Related Activities include Equity Investments, Equity-Like Loans, and CDFI Support Activities (12 CFR 1806.103(p)). Distressed Community Financing Activities include Affordable Housing Loans, Affordable Housing Development Loans and related Project Investments; Education Loans; Commercial Real Estate Loans and related Project Investments; Home Improvement Loans; and Small Business Loans and related Project Investments (12 CFR 1806.103(u)). Service Activities include Deposit Liabilities, Financial Services, Community Services, Targeted Financial Services, and Targeted Retail Savings/Investment Products (12 CFR 1806.103(oo)).

When calculating BEA Program award amounts, the Fund will count only the amount an Applicant reasonably expects to disburse for a Qualified Activity within 12 months from the end of the Assessment Period. Subject to the exception outlined in Section I.G.1. of this NOFA, in no event shall the value of a Qualified Activity for purposes of determining a BEA Program award

exceed $10 million in the case of Commercial Real Estate Loans or any CDFI Related Activities (*i.e.*, the total principal amount of the transaction must be $10 million or less to be considered a Qualified Activity).

D. Designation of Distressed Community

An Applicant applying for a BEA Program award for carrying out Distressed Community Financing Activities, Services Activities, or CDFI Support Activities must designate one or more Distressed Communities. Each CDFI Partner that is the recipient of CDFI Support Activities from an Applicant must also designate a Distressed Community. The CDFI Partner can identify a different Distressed Community than the Applicant. Applicants providing Equity Investments to a CDFI, and CDFI Partners that receive Equity Investments, are not required to designate Distressed Communities. Please note that the CDFI Partner's designated Distressed Community must meet the requirements of the BEA Program and that a Distressed Community as defined by the BEA Program is not the same as an Investment Area as defined by the Community Development Financial Institutions (CDFI) Program, or a Low-Income Community as defined by the New Markets Tax Credit (NMTC) Program.

1. Definition of Distressed Community

A Distressed Community, defined in the Interim Rule at 12 CFR 1806.103(t) and more fully described in 12 CFR 1806.200, must meet the following minimum geographic, population, poverty, and unemployment requirements:

(a) *Geographic requirements:* A Distressed Community must be a geographic area: (i) That is located within the boundaries of a Unit of General Local Government; (ii) the boundaries of which are contiguous; and (A) The population of which is at least 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater; (B) the population must be at least 1,000 if no portion of the area is located within such a Metropolitan Area; or (C) the area is located entirely within an Indian Reservation.

(b) *Economic distress requirements:* A Distressed Community must be a geographic area where: (i) At least 30 percent of the Residents have incomes that are less than the national poverty level, as published by the U.S. Bureau of the Census in the most recent decennial census for which data is available; and (ii) the unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recent data, including estimates of unemployment developed using the U.S. Bureau of Labor Statistics' Census Share calculation method.

2. Designation of Distressed Community

An Applicant or CDFI Partner (as appropriate) shall designate an area as a Distressed Community by:

(a) Selecting Geographic Units which individually meet the minimum area eligibility requirements; or

(b) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (1) of this section provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

An Applicant engaging in Distressed Community Financing Activities or Service Activities designates a Distressed Community by submitting: (i) A List of Eligible Census Tracts; and (ii) a Map of the Distressed Community.

An Applicant that engaged in CDFI Support Activities only (or CDFI Support Activities and Equity Investments) may designate the same Distressed Community as any one of its CDFI Partners by signing and submitting with its application, a certification (included in the application materials) that it is designating the same Distressed Community as its CDFI Partner.

A CDFI Partner designates a Distressed Community by submitting: (i) A List of Eligible Census Tracts; (ii) a Map of the Distressed Community; and (iii) a Statement of Integral Involvement demonstrating that the CDFI Partner is Integrally Involved in the Distressed Community.

Applicants and CDFI Partners must use the CDFI Fund Information Mapping System (CIMS) to designate Distressed Communities. CIMS is accessed through *myCDFIFund* and contains step-by-step instructions on how to create and print the aforementioned List of Eligible Census Tracts and Map of the Distressed Community. *MyCDFIFund* is an electronic interface that is accessed through the Fund's website (*http://www.cdfifund.gov*). Instructions for registering with *myCDFIFund* are available on the Fund's website. If you have any questions or problems with registering, please contact the CDFI Fund IT HelpDesk by telephone at (202) 622–2455, or by e-mail to *ITHelpDesk@cdfi.treas.gov.*

E. CDFI Related Activities

CDFI Related Activities include Equity Investments, Equity-Like Loans, and CDFI Support Activities provided to eligible CDFI Partners. In addition to regulatory requirements, this NOFA provides the following:

1. Eligible CDFI Partner

CDFI Partner is defined as a CDFI that has been provided assistance in the form of CDFI Related Activities by an Applicant (12 CFR 1806.103(o)). For the purposes of this NOFA, an eligible CDFI Partner is:

(a) A CDFI that is not an insured credit union, insured depository institution, or depository institution holding company, and that has up to $25 million in total assets as of its most recently completed fiscal year;

(b) A CDFI that is an insured credit union that has up to $25 million in total assets as of its most recently completed fiscal year;

(c)a CDFI that is an insured depository institution or depository institution holding company and that has up to $500 million in total assets as of its most recently completed fiscal year; or

(d) A CDFI proposing a new level or type of activity in a CDFI Program-qualified Hot Zone (12 CFR part 1805, *et seq.*) (for further information on the CDFI Program's Hot Zones, please refer to the most recent NOFA for the Financial Assistance Component of the CDFI Program which is available on the Fund's website at *http://www.cdfifund.gov/programs*).

2.m Limitations on Eligible Qualified Activities Provided to Certain CDFI Partners

An Applicant that is also a CDFI cannot receive credit for any financial assistance or Qualified Activities provided to a CDFI Partner that is also an FDIC-insured depository institution or depository institution holding company.

3. Certificates of Deposit

Section 1806.103(q) of the Interim Rule states that any certificate of deposit placed by an Applicant or its Subsidiary in a CDFI that is a bank, thrift, or credit union must be: (i) Uninsured and committed for at least three years; or (ii) insured, committed for a term of at least three years, and provided at an interest rate that is materially below market rates, in the determination of the Fund. For purposes of this NOFA, ''materially below market interest rate'' is defined as an annual percentage rate that does not exceed 100 percent of yields on Treasury securities at constant maturity

as interpolated by Treasury from the daily yield curve and available on the Federal Reserve website at *http://www.federalreserve.gov/releases/H15/update*. For example, for a three-year certificate of deposit, Applicants should use the three-year rate posted for U.S. Government securities, Treasury Constant Maturity on H. 15 (Selected Interest Rates) Daily Release. The Federal Reserve updates the H. 15 daily at approximately 4 p.m. e.s.t. Certificates of deposit placed prior to that time may use the rate posted for the previous day. The annual percentage rate on a certificate of deposit should be compounded quarterly, semi-annually, or annually. In addition, Applicants should determine whether a certificate of deposit is insured based on the total amount the Applicant or its Subsidiary has on deposit on the day the certificate of deposit is placed. For example, if an Applicant purchased a $100,000 3-year certificate of deposit from a CDFI in April, 2003 and the Applicant purchases another $100,000 certificate of deposit from the same CDFI in May, 2004, then the second certificate of deposit should be treated as uninsured for purposes of calculating the annual percentage rate. The Applicant must note, in its BEA Program application, whether the certificate of deposit is insured or uninsured.

F. Equity-Like Loans

An Equity-Like Loan is a loan provided by an Applicant or its Subsidiary to a CDFI, and made on such terms that it has characteristics of an Equity Investment (consistent with requirements of the Appropriate Federal Banking Agency), as such characteristics may be specified by the Fund (12 CFR 1806.103(y)). For purposes of this NOFA, Equity-Like Loans must meet the following characteristics:

1. At the end of the initial term, the loan must have a definite rolling maturity date that is automatically extended on an annual basis if the CDFI borrower continues to be financially sound and carry out a community development mission;

2. Periodic payments of interest and/or principal may only be made out of the CDFI borrower's available cash flow after satisfying all other obligations;

3. Failure to pay principal or interest (except at maturity) will not automatically result in a default of the loan agreement; and

4. The loan must be subordinated to all other debt except for other Equity-Like Loans. Notwithstanding the foregoing, the Fund reserves the right to determine, in its sole discretion and on a case-by-case basis, if an instrument meets the above-stated characteristics of an Equity-Like Loan. Applicants must submit to the Fund for review, not later than 45 days prior to the end of the applicable Assessment Period, all documents evidencing loans that they wish to be considered as Equity-Like Loans. The purpose for this request is to enhance the Fund's ability to provide feedback to Applicants as to whether a transaction meets the Equity-Like Loan characteristics prior to the end of the applicable Assessment Period. The Fund will not redraft instruments, provide language for Applicants, or render legal opinions related to Equity-Like Loans. However, the Fund, in its sole discretion, may comment as to the consistency of a proposed instrument with the above-stated Equity-Like Loan characteristics. Such information will allow Applicants, if they so choose, to modify the instruments to conform to the program requirements prior to the end of the Assessment Period. This process is intended to prevent circumstances in which an Applicant executes loan documents without review by the Fund only to learn after the close of the Assessment Period that the transaction is ineligible for purposes of a BEA Program award. The Fund cannot guarantee timely feedback to Applicants that submit the aforementioned documentation less than 45 days prior to the end of the applicable Assessment Period.

G. Distressed Community Financing Activities

Distressed Community Financing Activities include Affordable Housing Loans, Affordable Housing Development Loans and related Project Investments, Education Loans, Commercial Real Estate Loans and related Project Investments, Home Improvement Loans, and Small Business Loans and related Project Investments (12 CFR 1806.103(u)). In addition to the regulatory requirements, this NOFA provides the following additional requirements.

1. Commercial Real Estate Loans and Related Project Investments

For purposes of this NOFA, eligible Commercial Real Estate Loans (12 CFR 1806.103(l)) and related Project Investments (12 CFR 1806.103(ll)) are generally limited to transactions with a total principal value of up to and including $10 million. The Fund will calculate award amounts in accordance with Section VIII.B. of this NOFA. Notwithstanding the foregoing, the Fund, in its sole discretion, may consider transactions with a total principal value of over $10 million, subject to review and approval of the Applicant's ''community benefit statement.'' The Applicant must demonstrate that the proposed project offers, or significantly enhances the quality of, a facility or service not currently provided to the Distressed Community. The application form contains additional information on how to fulfill this requirement.

2. Reporting Certain Financial Services

The Fund will value the administrative cost of providing certain Financial Services at the following per unit values:

(a) $100.00 per account for Targeted Financial Services;

(b) $50.00 per account for checking and savings accounts that do not meet the definition of Targeted Financial Services;

(c) $5.00 per check cashing transaction times the total number of check cashing transactions;

(d) $25,000 per new ATM installed at a location in a Distressed Community;

(e) $2,500 per ATM operated at a location in a Distressed Community;

(f) $250,000 per new retail bank branch office opened in a Distressed Community; and

(g) in the case of Applicants engaging in Financial Services activities not described above, the Fund will determine the account or unit value of such services.

3. In the case of opening a new retail bank branch office, the Applicant must certify that it has not operated a retail branch in the same census tract in which the new retail branch office is being opened in the past three years, and that such new branch will remain in operation for at least the next five years.

Financial Service Activities must be provided by the Applicant to Low- and Moderate-Income Residents. An Applicant may determine the number of Low- and Moderate-Income individuals who are recipients of Financial Services by either:

(a) Collecting income data on its Financial Services customers; or

(b) Certifying that the Applicant reasonably believes that such customers are Low- and Moderate-Income individuals and providing a brief analytical narrative with information describing how the Applicant made this determination.

II. Award Information

A. Award Amounts

Subject to funding availability, the Fund expects that it may award approximately $4 million for FY 2005

BEA Program awards, and approximately $6 million for FY 2006 BEA Program awards, in appropriated funds under this NOFA. The Fund reserves the right to award in excess of said funds under this NOFA, provided that the appropriated funds are available and the Fund deems it appropriate. Under this NOFA, the Fund anticipates a maximum award amount of $500,000 per Applicant. The Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate. Further, the Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

When calculating award amounts, the Fund will count only the amount an Applicant reasonably expects to disburse on a transaction within 12 months from the end of the Assessment Period. Subject to the exception outlined in Section I. G.1. of this NOFA, in no event shall the value of a Qualified Activity for purposes of determining a BEA Program award exceed $10 million in the case of Commercial Real Estate Loans or any CDFI Related Activities (*i.e.*, the total principal amount of the transaction must be $10 million, or less to be considered a Qualified Activity).

H. Types of Awards

BEA Program awards are made in the form of grants.

I. Notice of Award and Award Agreement

Each awardee under this NOFA must sign a Notice of Award and an Award Agreement prior to disbursement by the Fund of award proceeds. The Notice of Award and the Award Agreement contain the terms and conditions of the award. For further information, see Section IX. of this NOFA.

III. Eligibility

A. Eligible Applicants

The legislation that authorizes the BEA Program specifies that eligible Applicants for the BEA Program must be Insured Depository Institutions, as defined in 12 U.S.C. § 1813(c)(2). An Applicant must be FDIC-insured by December 31, 2004 for the FY 2005 funding round and by December 31, 2005 for the FY 2006 funding round to be eligible for consideration for a BEA Program award under this NOFA.

1. Prior Awardees

Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOFA. Prior BEA Program awardees and prior awardees of other Fund programs are eligible to apply under this NOFA, except as follows:

(a) *Failure to meet reporting requirements:* The Fund will not consider an application submitted by an Applicant if the Applicant, or an entity that Controls (as such term is defined in paragraph (g) below) the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award or allocation agreement(s), as of the application deadline(s) of this NOFA. Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received.

(b) *Pending resolution of noncompliance:* If an Applicant that is a prior awardee or allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement, and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund awardee or allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement, and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund will consider the applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance.

(c) *Default status:* The Fund will not consider an application submitted by an Applicant that is a prior Fund awardee or allocatee under any Fund program if, as of the application deadline of this NOFA, the Fund has made a final determination that such Applicant is in default of a previously executed assistance, award or allocation agreement(s) and the Fund has provided written notification of such determination to such Applicant. Further, an entity is not eligible to apply for an award pursuant to this NOFA if, as of the application deadline, the Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund): (i) Is a prior Fund awardee or allocatee under any Fund program, (ii) has been determined by the Fund to be in default of a previously executed assistance, award or allocation agreement(s), and (iii) the Fund has provided written notification of such determination to the defaulting entity.

(d) *Termination in default:* The Fund will not consider an application submitted by an Applicant that is a prior Fund awardee or allocatee under any Fund program if, within the 12-month period prior to the application deadline of this NOFA, the Fund has made a final determination that such Applicant's prior award or allocation terminated in default of the assistance, award or allocation agreement and the Fund has provided written notification of such determination to such Applicant. Further, an entity is not eligible to apply for an award pursuant to this NOFA if, within the 12-month period prior to the application deadline of this NOFA, the Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund awardee or allocatee under any Fund program whose award or allocation terminated in default of the assistance, award or allocation agreement and the Fund has provided written notification of such determination to the defaulting entity.

(e) *Undisbursed balances:* The Fund will not consider an application submitted by an Applicant that is a prior Fund awardee under any Fund program if the Applicant has a balance of undisbursed funds (defined below) under said prior award(s), as of the application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if

another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund awardee under any Fund program, and has a balance of undisbursed funds (defined below) under said prior award(s), as of the application deadline of this NOFA. In the case where another entity Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the application deadline of this NOFA, the Fund will include the combined awards of the Applicant and such affiliated entities when calculating the amount of undisbursed funds.

(f) For the purposes of this section, ''undisbursed funds'' is defined as: (i) In the case of prior BEA Program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior BEA Program award(s) that remains undisbursed more than three (3) years after the end of the calendar year in which the Fund signed an award agreement with the Awardee, and (ii) in the case of prior CDFI Program or other Fund program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior award(s) that remains undisbursed more than two (2) years after the end of the calendar year in which the Fund signed an assistance agreement with the awardee.

''Undisbursed funds'' does not include (i) Tax credit allocation authority allocated through the New Markets Tax Credit Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the awardee as of the application deadline of this NOFA; and (iii) any award funds for an award that has been terminated, expired, rescinded, or deobligated by the Fund.

(g) For purposes of this NOFA, the term ''Control'' means: (1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities (as defined in 12 CFR 1805.104(mm)) of any legal entity, directly or indirectly or acting through one or more other persons; (2) control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any legal entity; or (3) the power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any legal entity.

(h) *Contact the Fund:* Accordingly, Applicants that are prior awardees and/or allocatees under any Fund program are advised to: (i) Comply with requirements specified in assistance, award and/or allocation agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for the disbursement of any outstanding balance of a prior award(s). All outstanding reports, compliance or disbursement questions should be directed to the Grants Management and Compliance Manager by e-mail at *gmc@cdfi.treas.gov;* by telephone at (202) 622–8226; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to Applicants' reporting, compliance or disbursement questions between the hours of 9 a.m. and 5 p.m. e.s.t., starting the date of the publication of this NOFA through February 10, 2005 (for the FY 2005 funding round) and through February 10, 2006 (for the FY 2006 funding round) (two business days before the application deadline). The Fund will not respond to Applicants' reporting, compliance or disbursement telephone calls or e-mail inquiries that are received after 5 p.m. e.s.t. on February 10, 2005 until after the funding application deadline of February 14, 2005 for the FY 2005 funding round or after 5 p.m. e.s.t. on February 10, 2006 until after the funding application deadline of February 14, 2006 for the FY 2006 funding round.

2. Cost Sharing and Matching Fund Requirements

Not applicable.

3. Prohibition Against Double Funding

No CDFI may receive a BEA Program award if it has:

(a) An application pending for assistance under the CDFI Program (12 CFR part 1805, *et seq.*);

(b) Directly received assistance from the Fund under the CDFI Program within the 12-month period prior to the date the Fund selected the Applicant to receive a BEA Program award; or

(c) Ever received assistance under the CDFI Program for the same activities for which it is seeking a BEA Program award.

An insured depository institution investor (and its affiliates and Subsidiaries) may not receive a BEA Program award in addition to a New Markets Tax Credit Program allocation for the same investment in a Community Development Entity, as defined at 26 U.S.C. § 45D(c).

IV. Application and Submission Information

A. Address to Request Application Package

Applicants may submit applications under this NOFA in paper form (except as provided below for the Report of Transactions). Shortly following the publication of this NOFA, the Fund will make the FY 2005–2006 BEA Program application materials available on its Web site at *http://www.cdfifund.gov*. The Fund will send application materials to Applicants that are unable to download them from the Web site. To have application materials sent to you, contact the Fund by telephone at (202) 622–6355; by e-mail at *cdfihelp@cdfi.treas.gov*; or by facsimile at (202) 622–7754. These are not toll free numbers.

B. Application Content Requirements

Detailed application content requirements are found in the application related to this NOFA. Applicants must submit all materials described in and required by the application by the applicable deadlines. Applicants will not be afforded an opportunity to provide any missing materials or documentation. Additional information, including instructions relating to the submission of the application and supporting documentation, is set forth in further detail in the application. Please note that, pursuant to OMB guidance (68 FR 38402), each Applicant must provide, as part of its application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. In addition, each application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the Internal Revenue Service (IRS) confirming the EIN. Incomplete applications will be rejected and returned to the sender.

An Applicant may not submit more than one application in response to either the FY 2005 funding round or FY 2006 funding round.

C. Form of Application Submission

Applicants must submit applications under this NOFA in paper form, with the exception of the required electronic submission of the Report of Transactions (see Section IV.D.3. of this NOFA). Applications sent by facsimile or by e-mail will not be accepted.

D. Application Submission Dates and Times

1. Application Deadlines

The deadline for receipt of applications for the FY 2005 funding round is 5 p.m. e.s.t. on February 14, 2005. The deadline for receipt of applications for the FY 2006 funding round is 5 p.m. e.s.t. on February 14, 2006. Applications and other required documents and other attachments received after 5 p.m. e.s.t. on the applicable date will be rejected and returned to the sender. Please note that the document submission deadlines in this NOFA and/or the funding application are strictly enforced. The Fund will not grant exceptions or waivers for late delivery of documents including, but not limited to, late delivery that is caused by third parties such as the United States Postal Service, couriers or overnight delivery services. Nor will the Fund afford Applicants the opportunity to provide missing documentation after said deadline(s).

2. Paper Applications

Paper applications must be received in their entirety by the applicable time and date, including an original (*i.e.*, not a photocopy or faxed copy) Applicant Information Form signed by the identified Authorized Representative, a letter or other documentation from the Internal Revenue Service confirming the Applicant's Employer Identification Number (EIN), and all other required paper attachments.

3. Electronic Submission of Report of Transactions

In order to expedite application review, Applicants must submit a specific section of the application, the Report of Transactions form, electronically (via myCDFIFund) per the instructions provided on the Fund's Web site, by 5 p.m. e.s.t. on February 14, 2005 (for the FY 2005 funding round) or by 5 p.m. e.s.t. on February 14, 2006 (for the FY 2006 funding round). Applicants will be unable to submit Reports of Transactions after said dates and times. Nor will Applicants have an opportunity to submit corrected Reports of Transactions after said dates and times.

V. Intergovernmental Review

Not Applicable.

VI. Funding Restrictions

Not Applicable.

VII. Addresses

Paper applications must be sent to: CDFI Fund Grants Management and Compliance Manager, BEA Program, Bureau of Public Debt, 200 Third Street, Room 10, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight mailings to this address is (304) 480–5450. The Fund will not accept applications in its offices in Washington, DC. Applications and attachments received in the Fund's Washington, DC offices will be rejected and returned to the sender. In addition, as provided above, Applicants must submit completed Reports of Transactions via *myCDFIFund* by the applicable deadline. The Fund will not afford Applicants an opportunity to provide missing documentation after the applicable deadline.

VIII. Application Review Information

A. Priority Factors

Priority Factors are the numeric values assigned to individual types of activity within a category of Qualified Activity. A Priority Factor represents the Fund's assessment of the degree of difficulty, the extent of innovation (including, for example, pricing), and the extent of benefits accruing to the Distressed Community for each type of activity. The Priority Factor works by multiplying the change in a Qualified Activity by its assigned Priority Factor to achieve a ''weighted value.'' This weighted value of the change would be multiplied by the applicable award percentage to yield the award amount for that particular activity. For purposes of this NOFA, the Fund is establishing Priority Factors for the Distressed Community Financing Activities category only, as follows:

Qualified activities	Priority factor
Affordable Housing Loans	3.0
Education Loans	3.0
Home Improvement Loans	3.0
Small Business Loans and related Project Investments	3.0
Affordable Housing Development Loans and related Project Investments	2.0
Commercial Real Estate Loans and related Project Investments	2.0

B. Award Percentages, Award Amounts, Selection Process

The Interim Rule describes the process for selecting Applicants to receive BEA Program awards and determining award amounts. Applicants will calculate and request an estimated award amount in accordance with a multiple step procedure that is outlined in the Interim Rule (at 12 CFR 1806.202). The Fund will use the Applicant's estimated award amount as the basis for calculating the actual award amount that an Applicant may receive. As outlined in the Interim Rule at 12 CFR 1806.203, the Fund will determine actual award amounts based on the availability of funds, increases in Qualified Activities from the Baseline Period to the Assessment Period, and each Applicant's priority ranking. In calculating the increase in Qualified Activities, the Fund will determine the eligibility of each transaction for which an Applicant has applied for a BEA Program award. In some cases, the actual award amount calculated by the Fund may not be the same as the estimated award amount requested by the Applicant.

In the CDFI Related Activities category (except for Equity Investments), if an Applicant is a CDFI, such estimated award amount will be equal to 18 percent of the increase in Qualified Activity for the category. If an Applicant is not a CDFI, such estimated award amount will be equal to 6 percent of the increase in Qualified Activity for the category. Notwithstanding the foregoing, the award percentage applicable to an Equity Investment, Equity-Like Loan, or Grant in a CDFI shall be 15 percent of the increase in Qualified Activity for the category. For the Distressed Community Financing Activities and Service Activities categories, if an Applicant is a CDFI, such estimated award amount will be equal to 9 percent of the weighted value of the increase in Qualified Activity for the category. If an Applicant is not a CDFI, such estimated award amount will be equal to 3 percent of the weighted value of the increase in Qualified Activity for the category.

If the amount of funds available during the funding round is insufficient for all estimated award amounts, Awardees will be selected based on the process described in the Interim Rule at 12 CFR 1806.203(b). This process gives funding priority to Applicants that undertake activities in the following order:

1. CDFI Related Activities;

2. Distressed Community Financing Activities, and

3. Service Activities.

Within each category, Applicants will be ranked according to the ratio of the actual award amount calculated by the Fund for the category to the total assets of the Applicant. Within the Distressed Community Financing category as well as the Service Activities category, Applicants that are certified CDFIs will be ranked first, and then Applicants that have carried out such Distressed Community Financing Activities and

Service Activities in a Distressed Community that encompasses an Indian Reservation.

The Fund, in its sole discretion: (i) May adjust the estimated award amount that an Applicant may receive; (ii) may establish a maximum amount that may be awarded to an Applicant; and (iii) reserves the right to limit the amount of an award to any Applicant if the Fund deems it appropriate.

For purposes of calculating award disbursement amounts, the Fund will treat Qualified Activities with a total principal amount of less than $250,000 as fully disbursed. Awardees will have 12 months from the end of the Assessment Period to make disbursements for Qualified Activities and 18 months to submit to the Fund disbursement requests for the corresponding portion of their awards, after which the Fund will rescind and deobligate any outstanding award balance and said outstanding award balance will no longer be available to the Awardee.

The Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the Fund deems it appropriate; if said changes materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's website.

There is no right to appeal the Fund's award decisions. The Fund's award decisions are final.

IX. Award Administration Information

A. Notice of Award

The Fund will signify its selection of an Applicant as an Awardee by delivering a signed Notice of Award and Award Agreement to the Applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of an award including, but not limited to, the requirement that an Awardee and the Fund enter into an Award Agreement. The Applicant must execute the Notice of Award and return it to the Fund along with the Award Agreement. The Fund reserves the right, in its sole discretion, to rescind its award and Notice of Award if the Awardee fails to return the Notice of Award or Award Agreement, signed by the Authorized Representative of the Awardee, along with any other requested documentation, by the deadline set by the Fund.

By executing a Notice of Award, the Awardee agrees that, if information (including administrative errors) comes to the attention of the Fund that either adversely affects the Awardee's eligibility for an award, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice to the Awardee, terminate the Notice of Award or take such other actions as it deems appropriate.

1. Failure To Meet Reporting Requirements

If an Applicant, or an entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award or allocation agreement(s), as of the date of the Notice of Award, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of award proceeds, until said prior awardee or allocatee is current on the reporting requirements in the previously executed assistance, award or allocation agreement(s). Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior awardee or allocatee is unable to meet this requirement within the timeframe set by the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

2. Pending Resolution of Noncompliance

If an Applicant is a prior Fund awardee or allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award, or allocation agreement, and (ii) the Fund has yet to make a final determination regarding whether or not the entity is in default of its previous assistance, award, or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of award proceeds, pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund awardee or allocatee under any Fund program, and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award, or allocation agreement, and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award, or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of award proceeds pending full resolution, in the sole determination of the Fund, of the noncompliance. If said prior awardee or allocatee is unable to meet this requirement, in the sole determination of the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

3. Default Status

If, at any time prior to entering into an Award Agreement under this NOFA, the Fund has made a final determination that an Applicant that is a prior Fund awardee or allocatee under any Fund program is in default of a previously executed assistance, award, or allocation agreement(s) and has provided written notification of such determination to the Applicant, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of award proceeds until said prior awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. Further, if, at any time prior to entering into an Award Agreement under this NOFA, the Fund has made a final determination that another entity which Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund awardee or allocatee under any Fund program, and is in default of a previously executed assistance, allocation or award agreement(s) and has provided written notification of such determination to the defaulting entity, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of award proceeds until said prior awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. If said prior awardee or allocatee is unable to meet this requirement, the Fund

reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

4. Termination in Default

If, within the 12-month period prior to entering into an Award Agreement under this NOFA, the Fund has made a final determination that an Applicant that is a prior Fund awardee or allocatee under any Fund program whose award or allocation terminated in default of such prior agreement and the Fund has provided written notification of such determination to such organization, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of award proceeds. Further, if, within the 12-month period prior to entering into an Award Agreement under this NOFA, the Fund has made a final determination that another entity which Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund awardee or allocatee under any Fund program, and whose award or allocation terminated in default of such prior agreement(s) and has provided written notification of such determination to the defaulting entity, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of award proceeds.

B. Award Agreement

After the Fund selects an Awardee, the Fund and the Awardee will enter into an Award Agreement. The Award Agreement shall provide that an Awardee shall: (i) Carry out its Qualified Activities in accordance with applicable law, the approved application, and all other applicable requirements; (ii) comply with such other terms and conditions (including recordkeeping and reporting requirements) that the Fund may establish; and (iii) not receive any monies until the Fund has determined that the Awardee has fulfilled all applicable requirements.

C. Administrative and National Policy Requirements

Not applicable.

D. Reporting and Accounting

Not applicable.

X. Agency Contacts

The Fund will respond to questions and provide support concerning this NOFA and the funding application between the hours of 9 a.m. and 5 p.m. e.s.t., starting the date of the publication of this NOFA through close of business February 10, 2005 for the FY 2005 funding round (2 business days before the application deadline) and through close of business February 10, 2006 for the FY 2006 funding round (2 business days before the application deadline).

The Fund will not respond to questions or provide support concerning the application after 5 p.m. e.s.t. on February 10, 2005 for the FY 2005 funding round, until after the application deadline of February 14, 2005. The Fund will not respond to questions or provide support concerning the application after 5 p.m. e.s.t. on February 10, 2006 for the FY 2006 funding round, until after the application deadline of February 14, 2006.

Applications and other information regarding the Fund and its programs may be downloaded and printed from the Fund's Web site at *http://www.cdfifund.gov.* The Fund will post on its Web site responses to questions of general applicability regarding the BEA Program.

A. Information Technology Support

Technical support can be obtained by calling (202) 622–2455 or by e-mail at *ithelpdesk@cdfi.treas.gov.* People who have visual or mobility impairments that prevent them from creating Hot Zone or Distressed Community maps using the Fund's Web site should call (202) 622–2455 for assistance. These are not toll free numbers.

B. Programmatic Support

If you have any questions about the programmatic requirements (such as the eligibility of specific transactions or CDFI Partners), contact a member of the BEA Program staff, who can be reached by e-mail at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

C. Administrative Support

If you have any questions regarding the administrative requirements of this NOFA, contact the Fund's Grants Management and Compliance Manager by e-mail at *gmc@cdfi.treas.gov,* by telephone at (202) 622–8226, by facsimile at (202) 622–9625, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

D. Legal Counsel Support

If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled ''How to Request a Legal Review'', found on the Fund's Web site at *http://www.cdfifund.gov.*

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713; 12 CFR part 1806.

Dated: September 3, 2004.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. 04–20460 Filed 9–8–04; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of an open meeting.

SUMMARY: This document contains a correction to a notice of an open meeting which was published in the **Federal Register** on August 24, 2004 (69 FR 52066). This notice relates to the Taxpayer Advocacy Panel's solicitation of public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227 (toll-free), or 954–423–7979 (non-toll free).

SUPPLEMENTARY INFORMATION:

Background

The notice of an open meeting that is the subject of this correction is under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988).

Need for Correction

As published, the notice of an open meeting contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of an open meeting, which is the subject of FR Doc. 04–19354, is corrected as follows:

On page 52066, column 3, under the caption **SUPPLEMENTARY INFORMATION:** lines 8 through 10, the language ''12 p.m. and from 1 p.m. to 5 p.m. EDT and

Saturday, September 18, 2004, from 8:30 a.m. to 12 p.m. EDT in Nashville,'' is corrected to read ''12 p.m. and from 1 p.m. to 5 p.m. CDT and Saturday, September 18, 2004, from 8:30 a.m. to 12 p.m. CDT in Nashville''.

Cynthia E. Grigsby,

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

[FR Doc. 04–20461 Filed 9–8–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
September 9, 2004

Part II

Securities and Exchange Commission

17 CFR Part 270
Prohibition on the Use of Brokerage Commissions To Finance Distribution; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–26591; File No. S7–09–04]

RIN 3235–AJ07

Prohibition on the Use of Brokerage Commissions To Finance Distribution

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to the rule under the Investment Company Act of 1940 that governs the use of assets of open-end management investment companies (''funds'') to distribute their shares. The amended rule prohibits funds from paying for the distribution of their shares with brokerage commissions. The amendments are designed to end a practice that poses significant conflicts of interest and may be harmful to funds and fund shareholders.

DATES: *Effective Date:* October 14, 2004.

Compliance Date: December 13, 2004. Section III of this release contains more information on the compliance date.

FOR FURTHER INFORMATION CONTACT: William C. Middlebrooks, Jr., Attorney, or Penelope W. Saltzman, Branch Chief, at (202) 942–0690, Office of Regulatory Policy, 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 adopting amendments to rule 12b–1 [17 CFR 270.12b–1] under the Investment Company Act of 1940 [15 U.S.C. 80a] (''Investment Company Act'' or ''Act'').[1]

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[1] Unless otherwise noted, all references to statutory sections are to the Investment Company Act of 1940, and all references to ''rule 12b–1'' or any paragraph of the rule will be to 17 CFR 270.12b–1, as amended.

I. Background

Funds buy and sell large amounts of securities each year for their portfolios.[2] Fund advisers choose which broker or dealer will effect transactions (''executing broker''), and can use commissions to reward brokers or dealers for promoting the sale of fund shares (''selling brokers''). Brokers are prohibited from conditioning the promotion of fund shares on the receipt of brokerage commissions from a fund.[3] Since 1981, however, fund advisers have been permitted to follow a disclosed policy ''of considering sales of shares that the fund issues as a factor in the selection of broker-dealers to execute portfolio transactions, subject to best execution.''[4]

Last year we conducted a review of current brokerage practices. Our staff found that the use of brokerage commissions to facilitate the sale of fund shares is widespread among funds that rely on broker-dealers to sell fund shares.[5] In some cases transactions are directed to selling brokers. In other cases where the selling broker lacks capacity to execute fund securities transactions, fund advisers will cause the fund to enter into ''step out'' and other types of arrangements under which a portion of the commission is directed to the selling brokers.[6] Fund advisers and selling brokers keep track of the value of directed brokerage, and if an insufficient amount of brokerage is directed to a selling broker, the broker may require compensation from the adviser. If the compensation that a selling broker receives for distributing shares of a fund (or a fund complex) falls below agreed-upon levels, the selling broker may reduce its selling efforts for the funds.

Pressures to distribute fund shares (or to avoid making payments for distribution out of their own assets) have caused advisers to direct more fund brokerage (or brokerage dollars) to selling brokers. The directed brokerage has been assigned explicit values, recorded, and traded as part of increasingly intricate arrangements by which fund advisers barter fund brokerage for sales efforts. These arrangements are today far from the benign practice that we approved in 1981 when we allowed funds to merely consider sales in allocating brokerage.[7]

Fund brokerage is an asset of the fund, and its use to pay for distribution expenses implicates rule 12b–1, which regulates the use of fund assets to pay selling brokers or otherwise finance the sale of fund shares.[8] Rule 12b–1 permits funds to use their assets to pay distribution-related costs, subject to certain conditions designed to address concerns about the conflicts of interest arising from allowing funds to finance distribution.[9] In 1981, shortly after we

[2] In 2003 alone, mutual fund securities transactions totaled approximately $8.3 trillion. Investment Company Institute, Mutual Fund Fact Book 131 (2004) (reporting approximately $4.3 trillion in total purchases and approximately $4 trillion in total sales of portfolio securities by equity, hybrid, and bond funds). This figure does not include purchases and sales by money market funds.

[3] NASD Conduct Rule 2830(k) (the ''Anti-Reciprocal Rule''). *See also* In the Matter of Morgan Stanley DW Inc., Securities Act Release No. 8339 (Nov. 17, 2003) (''Morgan Stanley'') (finding that broker-dealer's program for giving marketing preferences to funds in exchange for cash and brokerage commissions violated NASD Conduct Rule 2830(k)); *NASD Charges Morgan Stanley with Giving Preferential Treatment to Certain Mutual Funds in Exchange for Brokerage Commission Payments,* NASD News Release (Nov. 17, 2003) (''NASD News Release'') (announcing companion NASD action for violation of NASD Conduct Rule 2830(k) by, among other things, favoring the distribution of shares of particular funds on the basis of brokerage commissions to be paid by the funds).

[4] *See* Order Approving Proposed Rule Change and Related Interpretation under Section 36 of the Investment Company Act, Investment Company Act Release No. 11662 (Mar. 4, 1981) [46 FR 16012 (Mar. 10, 1981)] (''1981 Release'') (emphasis added). We made this statement in our order approving the NASD's amendment to the Anti-Reciprocal Rule in 1981 to permit NASD members, subject to the prohibition, to sell shares of funds that follow a disclosed policy ''of considering sales of their shares as a factor in the selection of broker/dealers to execute portfolio transactions, subject to best execution.'' *See also* discussion *infra* note 10 and accompanying text.

[5] *See* Prohibition on the Use of Brokerage Commissions to Finance Distribution, Investment Company Act Release No. 26356 (Feb. 24, 2004) [69 FR 9726 (Mar. 1, 2004)] (''Proposing Release'').

[6] For further description of these practices, *see* Proposing Release, *supra* note, at nn.12–14 and accompanying text.

[7] *See supra* note 4 and accompanying text.

[8] 17 CFR 270.12b–1. Because it is an asset of the fund, fund brokerage must be used for the fund's benefit. *See* Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV, Investment Advisers Act Release No. 1862 (Apr. 5, 2000) [65 FR 20524 (Apr. 17, 2000)], at text following n.166 (''Client brokerage, however, is an asset of the client—not of the adviser.''). *See also* American Bar Association, *Fund Director's Guidebook,* 59 Bus. Law. 201, 243 (2003) (''Brokerage commissions are assets of the fund, and the fund's directors are ultimately responsible for determining policies governing brokerage practices.'').

[9] *See* Bearing of Distribution Expenses by Mutual Funds, Investment Company Act Release No. 11414 (Oct. 28, 1980) [45 FR 73898 (Nov. 7, 1980)]. In order to rely on rule 12b–1, among other requirements, a fund must adopt ''a written plan describing all material aspects of the proposed financing of distribution'' that is approved by fund shareholders and fund directors. 17 CFR 270.12b–1(b). We adopted rule 12b–1 pursuant to section 12(b) of the Act, which makes it unlawful for a fund ''to act as a distributor of securities of which it is the issuer, except through an underwriter, in contravention of such rules and regulations' as we prescribe. 15 U.S.C. 80a-12(b). Section 12(b) was intended to protect funds from bearing excessive sales and promotion expenses. Investment Trusts

adopted rule 12b–1 and in light of its adoption, we concluded that ''it is not inappropriate for investment companies to seek to promote the sale of their shares through the placement of brokerage without the incurring of any additional expense.'' [10]

After reviewing the current directed brokerage practices described above, in February 2004, we proposed to amend rule 12b–1 to prohibit the use of fund brokerage to compensate broker-dealers for selling fund shares.[11] Our proposal was intended to end practices that we concluded were inconsistent with the rationale of our 1981 decision and involved unmanageable conflicts of interest. The NASD also has proposed a corresponding change to its rules.[12]

II. Discussion

We received thirty-three comment letters in response to our proposal to ban funds' use of directed brokerage to compensate brokers for the sale of fund shares. Twenty-three of these commenters supported the proposal, agreeing with our conclusion that the practice of using brokerage to reward sales of fund shares involves substantial conflicts of interest. Seven commenters opposed the proposed ban.[13]

We are adopting the amendments to rule 12b–1 substantially as proposed. We are taking this action because we have concluded that the practice of trading brokerage for sales of fund shares may harm investors in mutual funds in at least four ways:

• *Adverse Impact on Best Execution of Fund Transactions.* The decision to use brokerage commissions to pay for distribution poses significant conflicts. Fund advisers, whose compensation is based on the amount of assets held by the fund, have an incentive to promote the sale of fund shares to increase their advisory fees, and to avoid having to pay brokers out of their own pockets for selling fund shares (''revenue sharing'').[14] Competition among fund advisers to secure a prominent place in selling brokers' distribution networks (''shelf space'') has created powerful incentives to direct brokerage based on distribution considerations.[15] This can adversely affect decisions on how and where to effect portfolio securities transactions, or how frequently to trade portfolio securities.[16] Because of the practical limitations on the ability of fund directors to actively monitor and evaluate the motivations behind the selection of brokers to effect portfolio securities transactions, we believe that reliance on fund directors to police the use of fund brokerage to promote the sale of fund shares is not sufficient.[17]

• *Circumvention of Limits on Distribution Expenses.* Pursuant to section 22(b) of the Investment Company Act,[18] the NASD prohibits its members (*i.e.*, broker-dealers) from selling shares of funds that impose excessive sales loads and other distribution costs directly or indirectly on shareholders.[19] By using these directed brokerage arrangements, fund advisers and brokers are able to circumvent the NASD rules on excessive sales charges, thus undermining the protections afforded fund shareholders by those rules and by section 22(b) of the Act.

• *Transparency of Distribution Expenses.* Under our rules, fund investors receive information about fund expenses, including distribution expenses, in a fee table contained in every fund prospectus, which identifies the amount of sales load, as well as ''12b–1 fees'' that are deducted from fund assets.[20] The practice of trading brokerage for sales efforts involves costs that are built into brokerage commissions, which are treated as capital items rather than expenses. Thus, the practice of directing brokerage for distribution of fund shares diminishes the transparency of fund distribution costs and the ability of an investor or prospective investor to understand the amount of those costs.[21]

and Investment Companies, *Hearings on H.R. 10065 Before a Subcomm. of the House Comm. on Interstate and Foreign Commerce,* 76th Cong., 3d Sess. 112 (1940) (statement of David Schenker).

[10] 1981 Release, *supra* note 4. (emphasis added). This conclusion was stated in our order approving the NASD's amendment to its Anti-Reciprocal Rule. *See supra* notes—and accompanying text.

[11] Proposing Release, *supra* note 5.

[12] Under the proposed rule change, the NASD would eliminate the provision of the Anti-Reciprocal Rule that allows NASD members to sell shares of funds that follow a disclosed policy of considering the sale of fund shares in the selection of executing brokers. *See* Proposed Amendment to Rule Relating to Execution of Investment Company Portfolio Transactions, NASD Rule Filing 2004–027 (Feb. 10, 2004) (*http://www.nasdr.com/pdf-text/rf04_27.pdf*). The proposed amendment currently is under review by the Commission.

[13] Some commenters recommended enhanced disclosure of directed brokerage practices as an alternative approach. Other commenters questioned whether it would be possible to provide effective disclosures. After reviewing these comments, we believe that there would not be an effective way of providing comprehensive information that would allow many fund investors to evaluate a fund adviser's use of brokerage and the conflicts involved.

[14] *See* Proposing Release, *supra* note 5, at nn. 36–37 and accompanying text.

[15] *See* Rich Blake, *How High Can Costs Go?,* Institutional Investor, May 2001, at 62–63 (''Just as fund companies need to cut through the clutter of all the funds available for sale, they must also attract the attention of the average sales person, who might familiarize himself with just a handful of funds among hundreds in any given asset category.'').

[16] *See* Letter from Matthew P. Fink, President, Investment Company Institute, to William H. Donaldson, Chairman, SEC (Dec. 16, 2003) (*http://www.ici.org/statements/cmltr/03_sec_soft_com.html#TopOfPage*) (noting that the use of brokerage commissions to finance distribution ''can give rise to the appearance of a conflict of interest, as well as the potential for actual conflicts, given the fact-specific nature of the best execution determination.''). As with all other portfolio securities transactions, however, the fund adviser has a duty to seek best execution. The adviser must see that these portfolio securities transactions are executed ''in such a manner that the client's total cost or proceeds in each transaction is most favorable under the circumstances.'' In the Matter of Kidder, Peabody & Co., Inc., Investment Advisers Act Release No. 232 (Oct. 16, 1968). *See also* Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters, Securities Exchange Act Release No. 23170 (Apr. 23, 1986) [51 FR 16004 (Apr. 30, 1986)]; Applicability of the Commission's Policy Statement on the Future Structure of the Securities Markets to Selection of Brokers and Payment of Commissions by Institutional Managers, Investment Company Act Release No. 7170, [1971–72 Transfer Binder] Fed. Sec. L. Rep. (CCH) 78,776 (May 17,1972) (advisers ''must assign executions and pay for brokerage services in accordance with the reliability and quality of those services and their value and expected contribution to the performance of the account they are managing'').

[17] For these reasons, the rule provides for a ban, rather than the alternative approach, suggested by some commenters, that fund boards receive periodic reports about brokerage allocations.

[18] 15 U.S.C. 80a–22(b).

[19] NASD Conduct Rule 2830(d). The rule deems a sales charge to be excessive if it exceeds the rule's caps. A fund's sales load (whether charged at the time of purchase or redemption) may not exceed 8.5 percent of the offering price if the fund does not charge a rule 12b–1 fee. NASD Conduct Rule 2830(d)(1)(A). If the fund also charges a service fee, the maximum aggregate sales charge may not exceed 7.25 percent of the offering price. NASD Conduct Rule 2830(d)(1)(D). The aggregate sales charges of a fund with a rule 12b–1 fee may not exceed 7.25 percent of the amount invested, and the amount of the asset-based sales charge (the rule 12b–1 fee) may not exceed 0.75 percent per year of the fund's average annual net assets. NASD Conduct Rule 2830(d)(2)(B), (E)(i). Under the cap, therefore, an increase in the fund's sales load could reduce the permissible level of payments a selling broker may receive in the form of 12b–1 fees. The NASD designed the rule so that cumulative charges for sales-related expenses, no matter how they are imposed, are subject to equivalent limitations. *See* Order Approving Proposed Rule Change Relating to the Limitation of Asset-Based Sales Charges as Imposed by Investment Companies, Securities Exchange Act Release No. 30897 (July 7, 1992) [57 FR 30985 (July 13, 1992)], at text accompanying n.9.

[20] Item 3 of Form N–1A requires all funds to provide a fee table that discloses, among other things, ''Distribution [and/or Service] (12b–1) Fees.'' This phrase is defined in instruction 3.b. to Item 3 as including ''all distribution or other expenses incurred during the most recent fiscal year under a plan adopted pursuant to rule 12b–1.''

[21] In February, we proposed two rules under the Securities Exchange Act of 1934 [15 U.S.C. 78a] (''Exchange Act'') that would require broker-dealers to provide their customers with specific information, at the point of sale and in transaction confirmations, regarding the costs and conflicts of interest that arise from the distribution of fund shares. *See* Confirmation Requirements and Point of

Continued

• *Consequence of Broker Conflicts.* Finally, these practices may corrupt the relationship between broker-dealers and their customers.[22] Receipt of brokerage commissions by a broker-dealer for selling fund shares creates an incentive for the broker to recommend funds that best compensate the broker rather than funds that meet the customer's investment needs.[23] Because of the lack of transparency of brokerage commissions and their value to a broker-dealer, customers are unlikely to appreciate the extent of this conflict.

A. Ban on Directed Brokerage

Rule 12b–1(h)(1) prohibits funds from compensating a broker-dealer for promoting or selling fund shares by directing brokerage transactions to that broker.[24] The prohibition applies both to directing transactions to selling brokers, and to indirectly compensating selling brokers by participation in step-out and similar arrangements in which the selling broker receives a portion of the commission.[25] The ban extends to any payment, including any commission, mark-up, mark-down, or other fee (or portion of another fee) received or to be received from the fund's portfolio transactions effected through any broker or dealer.[26]

B. Policies and Procedures

The amendments we are adopting today recognize that many funds are likely to find that, for some portfolio transactions, the broker-dealer who can provide best execution also distributes the fund's shares. The prohibition we adopt today is not intended to compromise best execution. Nevertheless, the fact that a selling broker provides best execution would not cure a violation of the prohibition on funds or their advisers directly or indirectly compensating the broker for promoting fund shares with payments from portfolio transactions. Rule 12b–1(h)(2) permits a fund to use its selling broker to execute transactions in portfolio securities [27] only if the fund or its adviser has implemented policies and procedures designed to ensure that its selection of selling brokers for portfolio securities transactions is not influenced by considerations about the sale of fund shares.[28] These procedures must be approved by the fund's board of directors, including a majority of the independent directors, and must be reasonably designed to prevent: (i) The persons responsible for selecting broker-dealers to effect transactions in fund portfolio securities transactions (*e.g.*, trading desk personnel) from taking into account, in making those decisions, broker-dealers' promotional or sales efforts,[29] and (ii) the fund, its adviser and principal underwriter from entering into any agreement or other understanding under which the fund directs brokerage transactions or revenue generated by those transactions to a broker-dealer to pay for distribution of the fund shares.[30] These procedures must be designed to prevent funds from entering into informal arrangements to direct portfolio securities transactions to a particular broker.[31]

The procedures should be incorporated into each fund's compliance policies and procedures, which each fund is required to adopt by our rule 38a–1.[32] Fund chief compliance officers should assure themselves that the required procedures are in place as well as any others that they believe are reasonably necessary to prevent violation of the prohibition against directing brokerage for sales of fund shares. Compliance officers of broker-distributed funds should monitor the operation of the policies and procedures, and should consider periodic testing of brokerage allocations to determine whether there is a significant correlation between sales and the direction of brokerage that may suggest the existence of informal arrangements in violation of the rule.

Several commenters urged that we modify the rule to incorporate a safe harbor for funds that use selling brokers to execute portfolio securities transactions. Many of these commenters asserted that without a safe harbor included in the amended rule, funds would be discouraged from selecting selling brokers to execute portfolio transactions. We believe that a safe harbor is unnecessary. As described above, we are requiring instead that funds that select their selling brokers to execute trades implement policies and procedures designed to ensure that those selections are based on the quality of the execution rather than the promotion of fund shares.[33] The inclusion of this requirement acknowledges that, consistent with the ban we are adopting today, there will be some instances, in which funds will execute portfolio securities transactions through their selling brokers.

C. Further Amendments to Rule 12b–1

We also requested comment on the need for further amendments to rule 12b–1, including the rescission of the rule. We received approximately 1,650 comments in response to this request for comment. Comment letters provided a number of alternatives and suggestions that we have asked the staff to explore.

Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendment to the Registration Form for Mutual Funds, Securities Exchange Act Release No. 49148 (Jan. 29, 2004) [69 FR 6438 (Feb. 10, 2004)]. Because we are prohibiting the payment of brokerage commissions to finance fund share distribution, funds will no longer be able to pay for share distribution with brokerage commissions. Thus, we will consider the effect of this prohibition when evaluating any further action with regard to disclosures of brokerage commissions associated with portfolio securities transactions.

[22] *See, e.g.*, Morgan Stanley, *supra* note 3 (finding broker-dealer had willfully violated section 17(a)(2) of the Securities Act of 1933 [15 U.S.C. 77q(a)(2)] and rule 10b–10 [17 CFR 240.10b–10] under the Exchange Act by failing to disclose to its customers who purchased fund shares that it was being paid by certain fund companies, with a combination of cash and brokerage commissions, to make special efforts to market those funds; also finding broker-dealer had violated NASD Rule 2830(k), which essentially prohibits NASD members from favoring the sale of mutual fund shares based on the receipt of brokerage commissions); NASD News Release, *supra* note 3. *See also* Laura Johannes and John Hechinger, *Conflicting Interests: Why a Brokerage Giant Pushes Some Mediocre Mutual Funds,* Wall St. J., Jan. 9, 2004, at A1.

[23] *See* Ruth Simon, *Why Good Brokers Sell Bad Funds,* Money, July 1991, at 94.

[24] Rule 12b–1(h)(1). The rule prohibits funds from financing distribution of fund shares through the direction of any service related to effecting a fund brokerage transaction, including performing or arranging for the performance of any function related to processing a brokerage transaction. The prohibition reaches transactions executed by government securities dealers and municipal securities dealers.

[25] Rule 12b–1(h)(1)(ii). The prohibition also extends to circumstances in which two funds cooperate to direct brokerage commissions to the selling broker of the other fund. See section 48 under the Act [15 U.S.C. 80a–47(a)] (making it unlawful for a person to do indirectly what the person could not do directly).

[26] Rule 12b–1(h)(1)(ii).

[27] Some commenters expressed concern that the rule would inhibit funds from using selling brokers to execute fund brokerage transactions, and requested that the Commission clarify that the rule does not prohibit a fund from using a selling broker to execute brokerage transactions.

[28] Rule 12b–1(h)(2). *See supra* note 16.

[29] Rule 12b–1(h)(2)(ii)(A).

[30] Rule 12b–1(h)(2)(ii)(B). This provision should be interpreted broadly to reach any arrangement or other understanding, whether binding or not, between a fund and a broker-dealer, including an understanding to direct brokerage to a government securities dealer or a municipal securities dealer, or an understanding in which each of two funds directs brokerage to the other fund's selling broker.

[31] Under our compliance rule, a fund's compliance officer is required to report annually to the board regarding the operation of the fund's policies and procedures, including policies and procedures to ensure that brokerage allocation is not influenced by considerations of fund distribution. 17 CFR 270.38a–1(a)(4)(iii)(A). Therefore, we did not include a provision in the rule, as suggested by some commenters, that would require periodic reporting of brokerage allocation to the board.

[32] 17 CFR 270.38a–1.

[33] Rule 12b–1(h)(2).

These included an approach set forth in the Proposing Release that would refashion rule 12b–1 to provide that funds deduct distribution-related costs directly from shareholder accounts rather than from fund assets.[34] Commenters also addressed concerns regarding revenue sharing. We will take these and other comments we received into consideration as we evaluate whether and how to amend the rule further. We are not adopting any further changes to rule 12b–1 today.

III. Effective and Compliance Dates

The amendments to rule 12b–1 will be effective on October 14, 2004. The compliance date of these rule amendments is December 13, 2004. No later than the compliance date, funds must be in compliance with the ban in paragraph (h)(1) of the rule and funds that use their selling brokers to execute portfolio securities transactions must have in place the policies and procedures prescribed by paragraph (h)(2)(ii) of rule 12b–1. Funds may make corresponding changes to their registration statements at the time of the next regularly scheduled amendment.

IV. Cost-Benefit Analysis

We are sensitive to the costs and benefits that result from our rules. The amendments prohibit the use of brokerage commissions to compensate broker-dealers for the distribution of fund shares. In the Proposing Release, we requested comment and specific data regarding the costs and benefits of the proposed amendments.[35] We received no comments on the costs and benefits of the proposed amendments.

A. Benefits

The amendments will benefit funds and their shareholders. The practice of directing brokerage for sales involves substantial conflicts of interest that can harm shareholders. Fund advisers control fund brokerage and, as a result of their compensation structures, have incentives to maximize the size of funds they advise, while fund shareholders are interested in maximizing their fund returns by minimizing overall costs, including transaction costs. Fund advisers that overtrade fund portfolio securities in order to generate additional sales of fund shares, or that fail to optimize transactions costs, impose real costs on fund investors, which these rule amendments seek to eliminate. The opaqueness of fund transaction costs makes it impossible for investors to control the conflict or to understand the amount of actual costs incurred for distribution of fund shares.

The elimination of the practice of directing fund brokerage for distribution also may yield secondary benefits to funds if it leads to lower institutional brokerage rates, lower portfolio turnover rates, and better transparency of distribution costs. The Commission has no way of quantifying these benefits.

B. Costs

The amendments may decrease the commissions received by broker-dealers who may seek to make up for any shortfall from other sources. In response, fund advisers may seek to increase sales loads paid by investors, or to increase the amount of payments to broker-dealers deducted from fund assets under a rule 12b–1 plan. The ability of advisers to obtain these funds is, however, subject to NASD limits, and by the requirement that fund shareholders approve increases to fees deducted pursuant to a rule 12b–1 plan. Alternatively, advisers may be required to increase the payments that they make to broker-dealers out of their own assets, which are likely to cause advisers' costs to rise.[36] Advisers may resist making these payments because of uncertainty that they may be recouped.

We assume that a great many, if not all, funds are likely to find that, for some portfolio transactions, the broker-dealer who can provide best execution also distributes the fund's shares. These funds will incur costs in order to comply with the requirement for policies and procedures contained in the amendments.[37] Specifically, these funds or their advisers would be required to institute policies and procedures reasonably designed to prevent: (i) The persons responsible for selecting broker-dealers to effect transactions in fund portfolio securities from taking broker-dealers' promotional or sales efforts into account in making those decisions; and (ii) the fund, its adviser or principal underwriter, from entering into any agreement under which the fund directs brokerage transactions or revenue generated by those transactions to a broker-dealer to pay for distribution of the fund's shares. We do not anticipate that drafting or implementing these policies and procedures will be costly.

By narrowing the options for financing distribution of fund shares, the proposed amendments could impose costs on funds and their advisers. If the remaining methods of financing distribution are not adequate, funds may not grow as quickly as they otherwise would have. Advisers, whose compensation is generally tied to net assets, may experience slower growth in their advisory fees, and fund shareholders may not benefit from the economies of scale that accompany asset growth.[38]

V. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act mandates the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[39]

As discussed above, the amendments prohibit funds from compensating selling brokers with commissions generated from fund portfolio securities transactions. This new prohibition could promote efficiency by eliminating brokers' selling efforts, which are not indicative of their execution capabilities, as a factor that fund advisers use in selecting an executing broker. Efficiency also will be enhanced because, if commissions are not used to finance the distribution of a fund's shares, lower commission rates may be available or the fund may be able to obtain other services more directly beneficial to it and its shareholders.

We do not anticipate that these amendments will harm competition; they are, in fact, intended to enhance competition. All funds are precluded from using this form of compensation. In addition, the amendments should reduce incentives that broker-dealers currently have to base their fund recommendations to customers on payment for distribution. The amendments also could foster greater competition in brokerage commission rates by unbundling distribution from execution.

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[34] *See* Proposing Release, *supra* note 5, at nn. 63–67 and accompanying text.

[35] *See* Proposing Release, *supra* note 5, at section V.C.

[36] Advisers may seek to increase their management fees to offset increased payments to broker-dealers. Any increase in management fees would have to be approved by the fund's shareholders. *See* 15 U.S.C. 80a–15(a).

[37] We assume that a great majority of, if not all, funds are likely to find that, for some portfolio transactions, the broker-dealer who can provide best execution also distributes the fund's shares.

[38] Historically, however, fund shareholders have not always enjoyed lower expenses as a result of increased assets (the absence of lower expenses can result from a number of causes, including that advisers are failing to pass on scale economies to shareholders or that advisers are not themselves earning scale economies).

[39] 15 U.S.C. 80a–2(c).

Although we do not anticipate that these amendments will adversely impact competition, we do not know whether these amendments will affect all funds in the same manner. Certain types of portfolio managers, for instance, might rely more heavily on directed brokerage to ensure adequate shelf space for the funds they advise than other advisers, which could result in an increase in some funds' costs. The ban on directed brokerage to pay for distribution also could lead to an increase in costs for some funds if the amendments compel the fund to modify the way it distributes its shares. This potential differential impact on funds could affect competition.

The amendments prohibit a fund from relying on its selling brokers to effect fund portfolio securities transactions unless the fund has policies and procedures in place designed to ensure the active monitoring of brokerage allocation decisions when executing brokers also distribute the fund's shares. Thus, funds will not be unnecessarily limited in their choice of executing brokers, and the amendments will not have adverse effects on competition in the provision of brokerage services. We do not anticipate that the amendments will affect capital formation.

VI. Paperwork Reduction Act

As explained in the Proposing Release, the amendments contain a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[40] We published notice soliciting comments on the collection of information requirements in the Proposing Release and submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information requirements associated with the proposed amendments is ''Rule 12b–1 under the Investment Company Act, 'Distribution of Shares by Registered Open-End Management Investment Company.' '' 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 control number. The OMB control number for rule 12b–1 is 3235–0212.

Rule 12b–1 permits funds to use their assets to pay distribution-related costs. In order to rely on rule 12b–1, a fund must adopt ''a written plan describing all material aspects of the proposed financing of distribution'' that is approved by fund shareholders and fund directors. Any material amendments to the rule 12b–1 plan similarly must be approved by fund directors, and any material increase in the amount to be spent under the plan must be approved by fund shareholders. In considering a rule 12b–1 plan, the fund board must request and evaluate information reasonably necessary to make an informed decision. Rule 12b–1 also requires the fund to preserve for six years copies of the plan, any related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for implementing or continuing a rule 12b–1 plan.

As discussed above, today we are adopting amendments to rule 12b–1 substantially as proposed. To eliminate a practice that poses significant conflicts of interest and may be harmful to funds and fund shareholders, we are amending rule 12b–1 to prohibit funds from paying for the distribution of their shares with brokerage commissions. Funds that use their selling brokers to execute securities transactions will be required to implement, and their boards of directors (including a majority of independent directors) to approve, policies and procedures. The policies and procedures must be reasonably designed to prevent: (i) The persons responsible for selecting broker-dealers to effect transactions in fund portfolio securities from taking broker-dealers' promotional or sales efforts into account in making those decisions; and (ii) the fund, its adviser or principal underwriter, from entering into any agreement under which the fund directs brokerage transactions or revenue generated by those transactions to a broker-dealer to pay for distribution of the fund's shares. This requirement includes the following new information collections: (i) A fund's documentation of its policies and procedures, and (ii) the approval by the board of directors of those policies and procedures.

The new information collection requirements are mandatory. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.[41] None of the commenters addressed the PRA burden associated with these amendments. OMB approved the information collection requirements.[42]

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 604. It relates to the amendments to rule 12b–1, which governs the use of fund assets to finance the distribution of fund shares. The Initial Regulatory Flexibility Analysis (''IRFA''), which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release.[43]

A. Reasons for the Proposed Action

As described more fully in Section I of this Release, the amendments are necessary to address the practice of directing brokerage commissions to particular broker-dealers in order to compensate them for selling fund shares, a practice we believe poses significant conflicts of interests and may be harmful to funds and fund shareholders.

B. Significant Issues Raised by Public Comment

When the Commission proposed the rule amendments that it is now adopting, it requested comment with respect to the proposal and the accompanying IRFA. We received no comments on the IRFA. Twenty-three commenters supported the Commission's proposal to ban the use of directed brokerage to finance distribution. Commenters noted that the practice gives rise to conflicts of interest, causes shareholders to be treated inequitably, may lead to portfolio churning in order to generate brokerage commissions, facilitates circumvention of the NASD's limits on sales charges, may result in inappropriate recommendations by brokers to their customers, and increases execution costs for funds.

Seven commenters opposed the ban on the use of brokerage commissions to pay for distribution. They argued that the proposed ban is unnecessary to protect investors and would inhibit the ability of funds to obtain best execution, increase commission rates by concentrating the brokerage business among fewer brokers, and eliminate a method of compensating broker-dealers for processing fund transactions and maintaining customer accounts. Opposing commenters offered the following alternatives to the proposed ban: (i) Enhanced disclosure of directed brokerage arrangements; (ii) Commission guidance about improper

[40] 44 U.S.C. 3501 to 3520.

[41] *See* section 31(c) of the Investment Company Act [15 U.S.C. 80a–30(c)].

[42] In the Proposing Release, we estimated that the aggregate burden for all funds in the first year after adoption would be 649,500 hours. We further estimated that the average weighted annual burden for all funds over the three-year period for which we requested approval of the information collection burden would be approximately 628,833 hours. *See* Proposing Release, *supra* note 5, at section VII.

[43] *See* Proposing Release, *supra* note 5, at section VIII.

arrangements; (iii) requiring funds to adopt policies and procedures governing brokerage allocation practices; (iv) as with other fund assets, prohibiting the use of brokerage commissions for distribution unless they are used in accordance with a rule 12b–1 plan; and (v) enhanced review and enforcement efforts with respect to existing restrictions on the use of directed brokerage.

C. Small Entities Subject to the Rule

A small business or small organization (collectively, ''small entity''), for purposes of the Regulatory Flexibility Act, is a fund that, together with other funds in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[44] Of approximately 5,124 registered investment companies, approximately 204 are small entities.[45] As discussed above, the amendments prohibit all funds, regardless of size, from using portfolio brokerage commissions to finance distribution. All funds that use selling brokers to execute portfolio transactions must implement policies and procedures. While we have no reason to expect that small entities will be disproportionately affected by the amendments, it is possible that a larger portion of smaller funds secure shelf space through the use of directed brokerage than is the case with larger funds. If true, smaller funds could incur some unanticipated costs as they adapt to these amendments.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The amendments do not include any new reporting or recordkeeping requirements. The amendments introduce a new prohibition, applicable to all funds, including small entities, on the use of fund brokerage commissions to compensate selling brokers. In addition, all funds, including small entities, are prohibited from using selling brokers to execute portfolio transactions unless they have implemented policies and procedures reasonably designed to prevent: (i) The persons responsible for selecting broker-dealers to effect transactions in fund portfolio securities from taking broker-dealers' promotional or sales efforts into account in making those decisions; and (ii) the fund, its adviser or principal underwriter, from entering into any agreement under which the fund directs brokerage transactions or revenue generated by those transactions to a broker-dealer to pay for distribution of the fund's shares. The board of directors must approve these policies and procedures.

E. Commission Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. Alternatives in this category would include: (i) Establishing different compliance or reporting standards that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying the compliance requirements under the rule for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of the rule, or any part of the rule.

Establishing different standards for small entities is not feasible because we believe that a complete ban on the use of brokerage commissions to finance distribution is necessary in light of the intensity of the conflicts of interest that surround the practice. It would be inappropriate to apply a different standard for small entities, whose advisers may face even greater pressure than advisers to larger funds to take all measures to enhance distribution. Shareholders of small funds should receive the same protection as shareholders in large funds.

We do not believe that clarification, consolidation, or simplification of the compliance requirements is feasible. The amendments contain a straightforward ban on the use of brokerage commissions to finance distribution. The special requirements applicable to a fund that uses a selling broker to execute its portfolio securities transactions are likewise clear.

We do not believe that the use of performance rather than design standards is feasible. The amendments prohibit the use of brokerage commissions to finance distribution because the experience of our staff, including a recent staff review of brokerage commission practices, has led us to believe that the conflicts surrounding this practice are largely unmanageable. The requirement that funds that rely on selling brokers to execute transactions must have in place policies and procedures to prevent the persons making brokerage allocation decisions from taking fund sales into account and to prohibit directed brokerage agreements is a performance standard, because it permits funds or their advisers to implement policies and procedures tailored to their organizations.

We believe that it would be impracticable to exempt small entities from the ban. Doing so would deny to small funds and their shareholders the protection that we believe they are due. We also believe that it would be impracticable to exempt small entities that effect fund portfolio transactions through a selling broker from the requirement that they implement policies and procedures.

Statutory Authority

The Commission is proposing amendments to rule 12b–1 under the Investment Company Act pursuant to the authority set forth in sections 12(b) [15 U.S.C. 80a–12(b)] and 38(a) [15 U.S.C. 80a–37(a)] of the Investment Company Act.

List of Subjects in 17 CFR Part 270

Investment companies, Securities.

Text of Rule

■ For reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended to read as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 1. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

■ 2. Section 270.12b–1 is amended by:

■ a. Removing the periods at the end of paragraphs (a)(1) and (a)(2) and adding semi-colons in their places;

■ b. Removing the word ''and'' at the end of paragraphs (b)(2) and (b)(3)(iii);

■ c. Removing the comma at the end of the introductory text of paragraph (b)(3)(iv) and adding a colon in its place;

■ d. Removing the word ''and'' at the end of paragraph (b)(3)(iv)(B);

■ e. Adding the word ''and'' at the end of paragraph (b)(4);

■ f. Removing the word ''and'' at the end of paragraph (e);

■ g. Removing the period at the end of paragraph (f) and adding a semi-colon in its place;

■ h. Removing the period at the end of paragraph (g) and adding ''; and'' in its place; and

■ i. Adding paragraph (h).

The addition reads as follows.

[44] 17 CFR 270.0–10.

[45] Some or all of these entities may contain multiple series or portfolios. If a registered investment company is a small entity, the portfolios or series it contains are also small entities.

§ 270.12b–1 Distribution of shares by registered open-end management investment company.

* * * * *

(h) Notwithstanding any other provision of this section, a company may not:

(1) Compensate a broker or dealer for any promotion or sale of shares issued by that company by directing to the broker or dealer:

(i) The company's portfolio securities transactions; or

(ii) Any remuneration, including but not limited to any commission, mark-up, mark-down, or other fee (or portion thereof) received or to be received from the company's portfolio transactions effected through any other broker (including a government securities broker) or dealer (including a municipal securities dealer or a government securities dealer); and

(2) Direct its portfolio securities transactions to a broker or dealer that promotes or sells shares issued by the company, unless the company (or its investment adviser):

(i) Is in compliance with the provisions of paragraph (h)(1) of this section with respect to that broker or dealer; and

(ii) Has implemented, and the company's board of directors (including a majority of directors who are not interested persons of the company) has approved, policies and procedures reasonably designed to prevent:

(A) The persons responsible for selecting brokers and dealers to effect the company's portfolio securities transactions from taking into account the brokers' and dealers' promotion or sale of shares issued by the company or any other registered investment company; and

(B) The company, and any investment adviser and principal underwriter of the company, from entering into any agreement (whether oral or written) or other understanding under which the company directs, or is expected to direct, portfolio securities transactions, or any remuneration described in paragraph (h)(1)(ii) of this section, to a broker (including a government securities broker) or dealer (including a municipal securities dealer or a government securities dealer) in consideration for the promotion or sale of shares issued by the company or any other registered investment company.

By the Commission.

Dated: September 2, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–20373 Filed 9–8–04; 8:45 am]

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Federal Register

Thursday,
September 9, 2004

Part III

The President

Proclamation 7807—Minority Enterprise Development Week, 2004

Proclamation 7808—To Modify the Generalized System of Preferences, and For Other Purposes

Federal Register
Vol. 69, No. 174
Thursday, September 9, 2004

Presidential Documents

Title 3—

The President

Proclamation 7807 of September 4, 2004

Minority Enterprise Development Week, 2004

By the President of the United States of America

A Proclamation

Minority businesses are a key component of the American economy and reflect the values that make our country strong. They create opportunities for workers, provide goods and services to consumers, and strengthen our communities. During Minority Enterprise Development Week, we celebrate the achievements of minority businesses and emphasize our commitment to creating an environment in which these entrepreneurs can succeed.

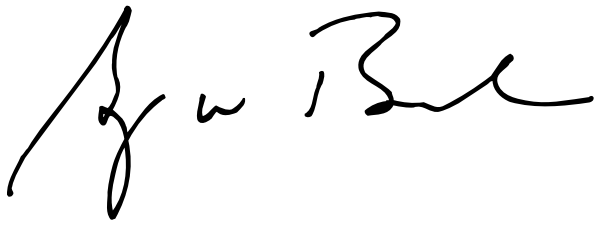
All of America benefits from the strong and vibrant entrepreneurial spirit of our small business owners. By reducing taxes, encouraging investment, and removing obstacles to growth, my Administration has helped American businesses thrive and create nearly 1.7 million new jobs since August 2003. In addition, the number of Small Business Administration loans to minorities increased by 40 percent last year to a 50-year record level. And my fiscal year 2005 budget request includes a 21 percent increase in funding for the Department of Commerce's Minority Business Development Agency, the largest increase in more than a decade.

To help provide sustainable outreach to minority enterprises, my Administration is working with the National Urban League to create an entrepreneurship network to further expand minority business ownership. With the help of government agencies, the private sector, and faith-based and community organizations, this network will include one-stop centers for business training, counseling, financing, and contracting and will focus resources toward facilitating economic growth and enterprise in historically neglected areas.

More minorities own small businesses than ever before. That is good for our citizens and good for our country. Together, we can create an environment where entrepreneurs can flourish and everyone can realize the American Dream.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 5 through September 11, 2004, as Minority Enterprise Development Week. I call upon all Americans to celebrate this week with appropriate programs, ceremonies, and activities and to recognize the countless contributions of our Nation's minority enterprises.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of September, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 04–20550
Filed 9–8–04; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7808 of September 7, 2004

To Modify the Generalized System of Preferences, and For Other Purposes

By the President of the United States of America

A Proclamation

1. Pursuant to sections 501 and 502(a)(1) of Title V of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2461, 2462(a)(1)), the President is authorized to designate countries as beneficiary developing countries for purposes of the Generalized System of Preferences (GSP).

2. Pursuant to section 503(d) of the 1974 Act (19 U.S.C. 2463(d)), the President may waive the application of the competitive need limitations in section 503(c)(2)(A) (19 U.S.C. 2463(c)(2)(A)) with respect to any eligible article from any beneficiary developing country if certain conditions are met.

3. Pursuant to section 503(d)(5) of the 1974 Act (19 U.S.C. 2463(d)(5)), any waiver granted under section 503(d) shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

4. Section 7(a) of the AGOA Acceleration Act of 2004 (Public Law 108–274) (''AGOA Acceleration Act'') amended section 506A of the GSP (19 U.S.C. 2466a) to provide certain benefits to any country designated as a beneficiary sub-Saharan African country under section 506A(a) of the GSP that becomes a party to a free trade agreement with the United States, and amended section 506B of the GSP (19 U.S.C. 2466b) to extend the period during which preferential treatment may be accorded to such countries.

5. Section 7(b) through (f) of the AGOA Acceleration Act amended section 112 of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Public Law 106–200) (AGOA) (19 U.S.C. 3721) to modify the type and quantity of textile and apparel articles eligible for the preferential treatment now accorded to designated beneficiary sub-Saharan African countries, and to provide certain benefits to any such country that becomes a party to a free trade agreement with the United States.

6. On December 17, 1992, the Governments of Canada, Mexico, and the United States entered into the North American Free Trade Agreement (NAFTA). The Congress approved the NAFTA in section 101(a) of the North American Free Trade Agreement Implementation Act (the ''NAFTA Implementation Act'') (19 U.S.C. 3311(a)), and the President implemented the tariff provisions of the NAFTA with respect to the United States in Proclamation 6641 of December 15, 1993.

7. Section 201(a) of the NAFTA Implementation Act (19 U.S.C. 3331(a)) authorizes the President to proclaim such duty modifications as the President may determine to be necessary or appropriate to carry out or apply, among other provisions, Article 308 and Annex 308.1 of the NAFTA.

8. NAFTA Article 308 and Annex 308.1 provide for each NAFTA Party to eliminate or reduce normal trade relations (most-favored-nation) rates of duty on certain automatic data processing machinery and parts, and

set the terms under which such goods shall be considered originating goods under the NAFTA when imported from the territory of a NAFTA Party.

9. Pursuant to sections 501 and 502(a)(1) of the 1974 Act, and having due regard for the factors set forth in section 501 of the 1974 Act and taking into account the factors set forth in section 502(c) of the 1974 Act (19 U.S.C. 2462(c)), I have decided to designate Iraq as a beneficiary developing country for purposes of the GSP.

10. Pursuant to section 503(d)(5) of the 1974 Act, I have determined that a previously granted waiver of the competitive need limitations of section 503(c)(2)(A) is no longer warranted due to changed circumstances.

11. In order to implement the tariff treatment provided under section 7 of the AGOA Acceleration Act, it is necessary to modify the Harmonized Tariff Schedule of the United States (HTS).

12. I have determined that each NAFTA Party has eliminated or reduced its normal trade relations (most-favored-nation) rates of duty applicable to the goods enumerated in Table 308.1.1 of NAFTA Annex 308.1 to the levels prescribed in that Table. Annex 308.1 provides for those goods to be originating goods under the NAFTA when imported from Canada or Mexico.

13. Pursuant to section 201(a) of the NAFTA Implementation Act, I have determined that the modifications to the HTS hereinafter proclaimed concerning goods considered to be originating when imported from the territory of a NAFTA Party are necessary and appropriate to carry out or apply Article 308 and Annex 308.1 of the NAFTA.

14. Section 604 of the 1974 Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to Title V and section 604 of the 1974 Trade Act, section 112 of the AGOA, and section 201(a) of the NAFTA Implementation Act, do proclaim that:

(1) Iraq is designated as a beneficiary developing country for purposes of the GSP, effective 15 days after the date of this proclamation.

(2) In order to reflect this designation in the HTS, general note 4(a) to the HTS is modified by adding ''Iraq'' to the list entitled ''Independent Countries'', effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of this proclamation.

(3) In order to provide that a country no longer be treated as a beneficiary developing country with respect to an eligible article for purposes of the GSP, general note 4(d) to the HTS is modified as provided in section 1 of Annex I.

(4) In order to withdraw preferential tariff treatment under the GSP for a certain article imported from a certain beneficiary developing country, the Rates of Duty 1-Special subcolumn for such HTS subheading is modified as provided for in section 2 of Annex I to this proclamation.

(5) The waiver of the application of section 503(c)(2)(A) of the 1974 Act to the article in the HTS subheading and to the beneficiary developing country listed in section 3 of Annex I to this proclamation is revoked.

(6) In order to provide for the preferential treatment provided for in section 506A and 506B of the GSP, as amended by section 7(a) of the AGOA Acceleration Act, and section 112 of the AGOA, as amended by

sections 7(b) through (f) of the AGOA Acceleration Act, the HTS is modified as provided in Annex II to this proclamation.

(7) In order to implement Article 308 and Annex 308.1 of the NAFTA for certain automatic data processing machinery and parts imported from Canada and Mexico, the HTS is modified as provided in Annex III to this proclamation.

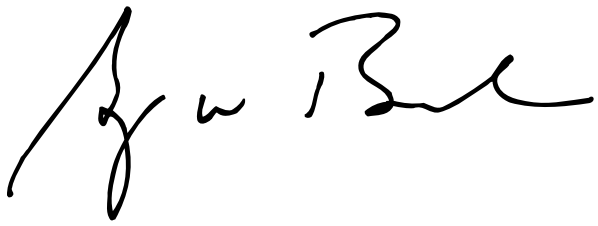
(8) Any provisions of previous proclamations and Executive Orders that are inconsistent with this proclamation are superseded to the extent of such inconsistency.

(9) The modifications made by and action taken in Annex I to this proclamation shall be effective with respect to eligible articles entered, or withdrawn from warehouse for consumption, on or after 60 days after the date of this proclamation.

(10) The modifications made by Annex II shall be effective with respect to eligible articles entered, or withdrawn from warehouse for consumption, on or after July 13, 2004, except that the modifications made by section 4(A) relating to increases in the quantity of certain articles eligible for duty-free treatment shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates provided in that section.

(11) The modifications made by Annex III shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2003.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of September, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



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ANNEX I

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the sixtieth day after the date of this proclamation:

Section 1. General note 4(d) to the HTS is modified by adding, in numerical sequence, the following subheading and country set out opposite it:

HTS Subheading	Country
8108.90.60	Russia

Section 2. The preferential tariff treatment under the GSP in the HTS is modified as follows: for subheading 8108.90.60, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol ''A'' and inserting an ''A*'' in lieu thereof.

Section 3. The waiver of the application of section 503(c)(2)(A) of the 1974 Act is revoked for the following subheading and country set out opposite it:

HTS Subheading	Country
8108.90.60	Russia

ANNEX II

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after July 13, 2004, the HTS is hereby modified as follows:

Section 1. General note 16(b)(ii)(A) is modified by inserting after "African countries" the phrase "or former beneficiary sub-Saharan African countries" and by adding in numerical sequence the following new subdivision (b)(iii):

"(iii) For purposes of subdivision (ii)(A) above, a "former beneficiary sub-Saharan African country" is a country that, after being designated as a beneficiary sub-Saharan African country under the AGOA and enumerated in subdivision (a) of this note, ceased to be designated as such a country by reason of its entering into a free trade agreement with the United States."

Section 2. General note 16(c) is modified by striking "2008" and by inserting in lieu thereof "2015".

Section 3. U.S. note 7 to subchapter II of chapter 98 is modified by deleting "United States (including" and by inserting in lieu thereof "United States, or both (including".

Section 4. Subchapter XIX of chapter 98 is modified as set forth below:

A. U.S. note 2 is modified as follows:

(i) by inserting at the end of the text of subdivision (a) the following sentence:

"Such imports of apparel articles under subheading 9819.11.09 during each of the one-year periods beginning on October 1, 2001, and October 1, 2002, to an aggregate quantity not to exceed 1.7857 percent and 4.2414 percent, respectively, of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.";

(ii) by deleting the first sentence of subdivision (b) of such U.S. note 2 and the tabulation immediately following it and by inserting the following new sentence and tabulation in lieu thereof:

"(b) Such imports of apparel articles under subheading 9819.11.09 shall be limited, in each of the one-year periods beginning on October 1, 2003, to an aggregate quantity not to exceed the applicable percentage set forth herein of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available:

12-Month Period	Applicable Percentage
October 1, 2003 through September 30, 2004	4.747
October 1, 2004 through September 30, 2005	5.310
October 1, 2005 through September 30, 2006	5.873
October 1, 2006 through September 30, 2007	6.436
October 1, 2007 through September 30, 2008 and each subsequent 12-month period through the period October 1, 2014 through September 30, 2015	7.0";

(iii) by striking from the second sentence of such subdivision (b) the language "and October 1, 2003," and by inserting in lieu thereof "through October 1, 2006," and by adding at the end of the immediately following tabulation the following 12-month periods and applicable percentages:

[12-month Period]	[Applicable Percentage]
"October 1, 2004 through September 30, 2005	2.6428
October 1, 2005 through September 30, 2006	2.9285
October 1, 2006 through September 30, 2007	1.6071";

and

(iv) by inserting in alphabetical sequence the following new subdivision:

"(e) For purposes of subheading 9819.11.09, an apparel article imported thereunder may contain fabrics, fabric components formed, or components knit-to-shape that are specified as being of a type required in the apparel articles of subheadings 9819.11.03 or 9819.11.06."

B. U.S. note 3 is modified as set forth below:

(i) by striking the period at the end of subdivision (a)(iii), by inserting in lieu thereof "; or" and by inserting the following new subdivision (iv) in sequence:

"(iv) any of the following components that do not meet the requirements set forth in the provisions of this subchapter: any collars or cuffs (the foregoing cut or knit-to-shape), drawstrings, shoulder pads or other padding, waistbands, belt attached to the article, straps containing elastic, or elbow patches.";

(ii) by striking from subdivision (a)(iii) the language "7 percent" and by inserting in lieu thereof "10 percent"; and

(iii) by adding in numerical sequence the following new subdivision (d):

"(d) For purposes of this subchapter, a "former beneficiary sub-Saharan African country" is a country that, after being designated as a beneficiary sub-Saharan African country under the AGOA and enumerated in subdivision (a) of this note, ceased to be designated as such a country by reason of its entering into a free trade agreement with the United States."

C. U.S. note 4 is modified by designating the existing sentence as subdivision (a) and by inserting the following new subdivision (b):

"(b) For purposes of such subheading, the phrase "ethnic printed fabrics" refers to fabrics that are--

(i) containing a selvedge on both edges, having a width of less than 50 inches, classifiable under subheading 5208.52.30 or 5208.52.40 of the tariff schedule;

(ii) of the type that contains designs, symbols and other characteristics of African prints--

(A) normally produced for and sold on the indigenous African market, and

(B) normally sold in Africa by the piece as opposed to being tailored into garments before being sold in indigenous African markets;

(iii) printed, including waxed, in one or more eligible beneficiary sub-Saharan countries; and

(iv) formed in the United States, from yarns formed in the United States, or from fabric formed in one or more beneficiary sub-Saharan African countries from yarn originating in either the United States or one or more beneficiary sub-Saharan African countries."

D. The article description of subheading 9819.11.03 is modified by striking "United States (including" and by inserting in lieu thereof "United States, or both (including".

E. The article description of subheading 9819.11.09 is modified as set forth below:

(i) by striking each occurrence of the phrase "either the United States or one or more such countries" and by inserting in lieu thereof the phrase "in the United States or one or more such countries or former beneficiary sub-Saharan African countries (as defined in U.S. note 3(d) to this subchapter), or both"; and

(ii) by deleting "countries, subject" and by inserting in lieu thereof the following:

"countries, whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-

to-shape described in U.S. note 2(e) to this subchapter (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in such U.S. note 2(e)), subject".

F. The article description of subheading 9819.11.12 is modified by striking "2004" and by inserting in lieu thereof "2007".

G. The article description of subheading 9819.11.21 is modified by striking all of the text starting with the word "countries" and by inserting in lieu thereof the following:

"countries, to the extent that apparel articles of such fabrics or yarns would be eligible for the tariff treatment provided in general note 12 to the tariff schedule, without regard to the source of the fabrics or yarns".

H. The article description of subheading 9819.11.27 is modified by striking "handmade or folklore textile and apparel goods" and by inserting in lieu thereof "handmade, folklore articles or ethnic printed fabrics".

I. The article description of subheading 9819.11.30 is modified by inserting after each occurrence of the phrase "and in one or more such countries" the language "or former beneficiary sub-Saharan African countries (as defined in U.S. note 3(d) to this subchapter)".

ANNEX III

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2003, general note 12 to the HTS is hereby modified as follows:

1. Subdivision (a)(i) is modified by inserting after "marked)," the expression "and goods enumerated in subdivision (u) of this note,"; and subdivision (a)(ii) is modified by inserting after "marked)," the expression "and goods enumerated in subdivision (u) of this note,".

2. Subdivision (b) of such note is modified by:

(a) deleting the period at the end of subdivision (iv) and by inserting in lieu thereof "; or", and

(b) inserting immediately below such subdivision (iv) the following new subdivision:

"(v) they are goods enumerated in subdivision (u) of this note and meet all other requirements of this note."

3. The following new subdivision is inserted at the end of such general note 12:

"(u) Goods that shall be considered originating goods. For the purposes of subdivision (b)(v) of this note, notwithstanding the provisions of subdivision (t) above, the automatic data processing machines, automatic data processing units and parts of the foregoing that are classifiable in the tariff provisions enumerated in the first column and are described opposite such provisions, when the foregoing are imported into the customs territory of the United States from the territory of Canada or of Mexico, shall be considered originating goods for the purposes of this note:

	Provisions	Description
(1)	8471.10.00, 8471.30.00, 8471.41.00	Automatic data processing machines
(2)	8471.49.10, 8471.50.00	Digital processing units
(3)	8471.49.15, 8471.60.10	Combined input/output units
(4)	8471.49.24, 8471.49.29, 8471.60.30, 8471.60.45	Display units
(5)	8471.49.21, 8471.49.42, 8471.49.48, 8471.60.20, 8471.60.70, 8471.60.80, 8471.60.90	Other input or output units
(6)	8471.49.50, 8471.70	Storage units
(7)	8471.49.60, 8471.49.85, 8471.49.95, 8471.80.10,	Other units of automatic data processing machines

	8471.80.40, 8471.80.90,	
(8)	8473.30	Parts of automatic data processing machines and units thereof
(9)	8471.49.70. 8504.40.60, 8504.40.70	Power supplies for automatic data processing machines
(10)	8504.90.20, 8504.90.40	Parts of power supplies for automatic data processing machines

[FR Doc. 04–20551

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