10–19–04 Tuesday
Vol. 69 No. 201 Oct. 19, 2004

Pages 61439–61576

Federal Register

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Federal Register
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Tuesday, October 19, 2004

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19325; Airspace Docket No. 04–ACE–54]

Modification of Class E Airspace; Dodge City, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace areas at Dodge City, KS. A review of the controlled airspace areas at Dodge City, KS revealed noncompliance with criteria for diverse departures from Dodge City Regional Airport. The review also identified other discrepancies in the legal descriptions for the Dodge City, KS Class E airspace areas. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing Standard Instrument Approach Procedures (SIAPs) to Dodge City Regional Airport. It also corrects discrepancies in the legal descriptions of Dodge City, KS Class E airspace areas and brings the airspace areas and legal descriptions into compliance with FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005. Comments for inclusion in the Rules Docket must be received on or before November 22, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19325/Airspace Docket No. 04–ACE–54, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area designated as a surface area and the Class E airspace area extending upward from 700 feet above the surface at Dodge City, KS. An examination of controlled airspace for Dodge City, KS revealed that these Class E airspace areas do not comply with airspace requirements for diverse departures from Dodge City Regional Airport as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The legal description of neither class E airspace area reflects the correct Dodge City Regional Airport airport reference point (ARP). The examination also revealed the lack of an extension to the Class E airspace area extending upward from 700 feet above the surface necessary to protect aircraft executing SIAPs.

This action modifies the Dodge City, KS Class E airspace area designated as a surface area from a 4.3-mile to a 4.2-mile radius of Dodge City Regional Airport. It expands the Class E airspace area extending upward from 700 feet above the surface from a 6.5-mile to a 6.7-miles radius of Dodge City Regional Airport and adds a southeast extension. The extension is defined by the Dodge City collocated very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) 160° radial, is 3.8 miles wide and extends to 11.4 miles southeast of the airport. The Dodge City VORTAC and the airspace extension are added to the legal description for the Class E airspace area extending upward from 700 feet above the surface. Additionally, the Dodge City Regional Airport ARP is corrected in both legal descriptions.

These modifications provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing SIAPs to Dodge City Regional Airport and bring the legal descriptions of the Dodge City, KS Class E airspace areas into compliance with FAA Order 7400.2E. Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 6005 of the same FAA Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall

regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19325/Airspace Docket No. 04–ACE–54.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE KS E2 Dodge City, KS

Dodge City Regional Airport, KS
(Lat. 37°45′48″ N., long. 99°57′56″ W.)

Within a 4.2-mile radius of Dodge City Regional Airport.

* * * * *

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

* * * * *

ACE KS E5 Dodge City, KS

Dodge City Regional Airport, KS
(Lat. 37°45′48″ N., long. 99°57′56″ W.)
Dodge City VORTAC
(Lat. 37°51′02″ N., long. 100°00′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Dodge City Regional Airport and within 1.9 miles each side of the Dodge City VORTAC 160° radial extending from the 6.8-mile radius of the airport to 17 miles southeast of the VORTAC.

* * * * *

Issued in Kansas City, MO on October 7, 2004.

Paul J. Sheridan,

Area Director, Western Flight Services Operations.

[FR Doc. 04–23387 Filed 10–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–138]

RIN 1625–AA08

Special Local Regulation for Marine Events; Southern Branch, Elizabeth River, Portsmouth, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the ''International Search and Rescue Competition'', a marine event to be held on the waters of the Southern Branch of the Elizabeth River at Portsmouth, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This regulation will restrict vessel traffic in portions of the Southern Branch of the Elizabeth River during the event.

DATES: This rule is effective from 8 a.m. on November 5, 2004, to 6 p.m. on November 6, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–04–138 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 30, 2004, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Southern Branch, Elizabeth River, Portsmouth, VA in the **Federal Register** (69 FR 52840). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3) the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because delaying the rule would be impractical and contrary to public interest as the event will take place on November 5 and 6, 2004.

Background and Purpose

On November 5 and 6, 2004, the Coast Guard and Canadian Auxiliaries will sponsor the ''International Search and Rescue Competition'', a marine event to be held on the waters of the Southern Branch of the Elizabeth River at Portsmouth, Virginia. The event will consist of International teams competing in various events designed to demonstrate competence in maritime search and rescue techniques. To provide for the safety of participants, spectators and support vessels, the Coast Guard will temporarily restrict vessel traffic in the Southern Branch of the Elizabeth River, including the North Ferry Landing, during the event.

Discussion of Comments and Changes

No comments were received in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast

Guard is establishing temporary special local regulations on specified waters of the Southern Branch of the Elizabeth River. Since no comments were received, no changes to this regulation were made.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation will prevent traffic from transiting a portion of the Southern Branch of the Elizabeth River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the Southern Branch of the Elizabeth River whenever the Coast Guard Patrol Commander determines it safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit the Southern Branch of the Elizabeth River during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period. The regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be allowed to transit the Southern Branch of the Elizabeth River whenever the Coast Guard Patrol Commander determines it safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans 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 (Public Law 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. 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 rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

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

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.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

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 amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 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. Add temporary § 100.35–T05–138 to read as follows:

§ 100.35–T05–138 Southern Branch, Elizabeth River, Portsmouth, VA.

(a) *Regulated area.* A regulated area is established for the waters of the Southern Branch of the Elizabeth River including the North Ferry Landing, from shoreline to shoreline, bounded to the north by a line drawn along Latitude 36°50′23″ N and bounded to the south by a line drawn along Latitude 36°50′12″ N. All coordinates reference Datum: NAD 1983.

(b) *Definitions.* As used in this section—

Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Group Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means all vessels participating in the International Search and Rescue Competition under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Group Hampton Roads.

(c) *Special local regulations.*

(1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(d) Enforcement period. This section will be enforced from 8 a.m. to 6 p.m. on November 5 and 6, 2004.

Dated: October 7, 2004.

Ben R. Thomason, III,

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

[FR Doc. 04–23373 Filed 10–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD07–04–120]

RIN 1625–AA08

Special Local Regulations; Columbus Day Regatta, Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent local regulation for the Columbus Day Regatta. The event is held annually on Saturday and Sunday of the Columbus Day weekend on Biscayne Bay, Miami, Florida. This regulation creates a regulated area that temporarily limits the movement of non-participant vessels. This regulation is needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective October 9, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD07–04–120) and will be available for inspection or copying at Coast Guard Sector Miami between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BMC D. Vaughn, Coast Guard Sector Miami, Miami Beach, Florida, (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 1, 2004, we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations; Columbus Day Regatta, Biscayne Bay, Miami, FL'' in the **Federal Register** (FR Doc. 04–19913). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The event is to be held on 9 and 10 October 2004 and it is in the interest of public safety to have this rule in effect at this time.

Background and Purpose

Columbus Day Regatta, Inc., sponsors a sailboat race with approximately 500 sailboats, ranging in length from 20 to 60 ft, that participate in the event. The

race takes place in Biscayne Bay, from Dinner Key to Soldier Key, Saturday and Sunday during the second weekend in October (Columbus Day Weekend). Approximately 50 spectator craft, and several hundred additional vessels, transit the area for the annual event. These regulations are intended to provide for the safety of life on the waters of Biscayne Bay during the event by controlling traffic in the regulated area.

Discussion of Rule

This rule creates a regulated area and prohibits non-participant vessels from entering the regulated area without the permission of the Coast Guard Patrol Commander. When the Coast Guard Patrol Commander determines that it is safe for vessels to transit the regulated area, vessel traffic may resume normal operations at the completion of the scheduled races and exhibitions, and between scheduled racing events. The regulated area encompasses all waters within the following points:

Latitude	*Longitude*
25°43′24″ N	080°12′30″ W
25°43′24″ N	080°10′30″ W
25°33′00″ N	080°11′30″ W
25°33′00″ N	080°15′54″ W
25°40′00″ N	080°15′00″ W

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Entry into the regulated area is prohibited for only limited time periods. Additionally, when the Coast Guard Patrol Commander determines that it is safe for vessels to transit the regulated area, vessel traffic may be allowed to resume normal operations at the completion of scheduled races and exhibitions and between scheduled racing events. Also, vessels may otherwise be allowed to enter the regulated area with permission of the Coast Guard Patrol Commander. Finally, advance notifications to the maritime community through marine information broadcasts will allow mariners to adjust plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in that portion of Biscayne Bay, between Dinner Key and Soldier Key, from 10 a.m. to 5 p.m., on the Saturday and Sunday of Columbus Day weekend. The regulations will only be in effect for 2 days in an area of limited commercial traffic. Also, vessel traffic will be allowed to resume normal operations at the completion of scheduled races and exhibitions, and between scheduled racing events, when the Coast Guard Patrol Commander determines it is safe to do so. Vessels may otherwise be allowed to enter the regulated area with permission of the Coast Guard Patrol Commander.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process. The Coast Guard offered its availability to answer inquiries from the public through responses to any comments generated by this rulemaking. No comments were received.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

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.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(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 amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 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. Add § 100.729 to read as follows:

§ 100.729 Columbus Day Regatta, Biscayne Bay, Miami, FL.

(a) *Regulated area.* A regulated area is established for the Columbus Day Regatta, Biscayne Bay, Miami, Florida. The regulated area encompasses all waters within the following points:

Latitude	*Longitude*
25°43′24″ N	080°12′30″ W
25°43′24″ N	080°10′30″ W
25°33′00″ N	080°11′30″ W
25°33′00″ N	080°15′54″ W
25°40′00″ N	080°15′00″ W

(b) *Definitions.* Coast Guard Patrol *Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Coast Guard Station Miami Beach.

(c) *Special Local Regulations.*

(1) Entry into the regulated area by non-participant persons or vessels is prohibited unless authorized by the Coast Guard Patrol Commander.

(2) At the completion of scheduled races and exhibitions, and departure of participants from the regulated area, the Coast Guard Patrol Commander may permit traffic to resume normal operations.

(3) Between scheduled racing events, the Coast Guard Patrol Commander may permit traffic to resume normal operations for a limited time.

(4) A succession of not fewer than 5 short whistle or horn blasts from a Coast Guard patrol vessel will be the signal for any and all vessels to take immediate steps to avoid collision.

(d) *Enforcement periods.* This rule will be enforced from 10 a.m. until 5 p.m. Saturday and Sunday during the second weekend in October (Columbus Day weekend).

Dated: October 6, 2004.

D. Brian Peterman,

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

[FR Doc. 04–23371 Filed 10–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7851]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

DATES: *Effective Dates:* The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Mike Grimm, Mitigation Division, 500 C Street, SW.; Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities

will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region VII				
Nebraska: Dannebrog, Village of, Howard County.	310118	April 22, 1975, Emerg. January 3, 1990, Reg. October 19, 2004, Susp.	10/19/2004	10/19/2004
Howard County, Unincorporated Areas.	310446	June 21, 1993, Emerg. September 30, 1997, Reg. October 19, 2004, Susp.	-do-	-do-

* -do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

David I. Maurstad,

Acting Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–23308 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to

adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: *Effective Date:* The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E. Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	*Elevation in feet (NGVD). +Elevation in feet (NAVD)
CALIFORNIA	
Plumas County, (FEMA Docket No. B–7447)	
Boyle Ravine:	
Confluence with Nugget Creek	+3,409
Approximately 625 feet upstream of Alder Street	+3,545
Chandler Creek:	
Confluence with Greenhorn Creek	+3,434
Approximately 320 feet upstream of Chandler Road	+3,464
Clear Stream:	
Confluence with Spanish Creek	+3,404
Approximately 2,200 feet upstream of confluence of Gansner Creek	+3,427
Gansner Creek:	
Confluence with Clear Stream	+3,423
Approximately 740 feet upstream of Bucks Lake Road	+3,497
Greenhorn Creek:	
Confluence with Spanish Creek	+3,401
Approximately 1,950 feet upstream of Highway 89/70	+3,494
Mill Creek:	
Confluence with Spanish Creek	+3,401
Approximately 2,500 feet upstream of Highway 89/70	+3,555
Nugget Creek:	
Confluence with Mill Creek	+3,402
Approximately 200 feet upstream of Nugget Lane	+3,455
Spanish Creek:	
At Oakland Camp Road	+3,392
Approximately 11,700 feet upstream of Highway 89/70	+3,452
Taylor Creek:	
Confluence with Greenhorn Creek	+3,446
Approximately 300 feet upstream of Chandler Road	+3,491
Thompson Creek:	
Confluence with Greenhorn Creek	+3,454
Approximately 3,400 feet upstream of confluence with Thompson Creek Splitflow	+3,548
Thompson Creek Splitflow:	
Confluence with Thompson Creek	+3,488
Approximately 2,600 feet upstream of confluence with Thompson Creek	+3,493
Unnamed Tributary to Boyle Ravine:	
Confluence with Boyle Ravine	+3,410
Approximately 150 feet upstream of Highway 89/70	+3,417
Wolf Creek:	
Approximately 4,500 feet downstream of Greenville Park Road Bridge	+3,534
Approximately 2 miles upstream of Main Street Bridge	+3,640
Maps are available for inspection at the Plumas County PlanningDepartment, 520 Main Street, Room 121, Quincy, California.	
COLORADO	
Erie (Town), Boulder and Weld Counties, (FEMA Docket No. B–7435)	
Coal Creek:	
At confluence of Boulder Cottonwood No. 1 Ditch	+5,046
At Tri-County Airport	+5,083
Maps are available for inspection at the Town of Erie Town Hall, 645 Holbrook Street, Erie, CO.	
OREGON	
Beaverton (City), Washington County, (FEMA Docket No. B–7447)	
Fanno Creek:	

Source of flooding and location	*Elevation in feet (NGVD). +Elevation in feet (NAVD)
Just upstream of Southwest Scholls Ferry Road	*165
Approximately 850 feet upstream of Southwest Scholls Ferry Road	*198
Maps are available for inspection at the Community Development Department, City Hall, 4755 Southwest Griffith Drive, Beaverton, Oregon.	
Durham (City), Washington County, (FEMA Docket No. B–7447)	
Fanno Creek:	
At confluence with the Tualatin River	*125
At Burlington Northern Railroad	*126
Tualatin River:	
At Interstate Highway 5	*123
At Burlington Northern Railroad (just upstream of confluence with Fanno Creek)	*125
Maps are available for inspection at City Hall, 17160 Southwest Upper Boones Ferry Road, Durham, Oregon.	
Tigard (City), Washington County, (FEMA Docket No. B–7447)	
Ash Creek:	
At confluence with Fanno Creek	*160
Just upstream of Oak Street	*170
Fanno Creek:	
At Burlington Northern Railroad	*126
At Southwest Scholls Ferry Road	*164
Summer Creek:	
At confluence with Fanno Creek	*158
Just upstream of 135th Avenue	*176
Tualatin River:	
At confluence with Fanno Creek	*125
Approximately 1.6 miles upstream of confluence with Fanno Creek	*127
Maps are available for inspection at the Engineering Department, City Hall, 13125 Southwest Hall Boulevard, Tigard, Oregon.	
Washington County, (FEMA Docket No. B–7447)	
Ash Creek:	
Just upstream of Southwest Hall Boulevard	*171
Just upstream of Hemlock Street	*181
Fanno Creek:	
Just upstream of Scholls Ferry Road	*197
Approximately 200 feet upstream of Beaverton-Hillsdale Highway	*243
Maps are available for inspection at the Department of Land Use and Transportation, 155 North First Avenue, Suite 350, MS 12, Hillsboro, Oregon.	

Source of flooding and location	*Elevation in feet (NGVD) +Elevation in feet (NAVD)	Communities affected
COLORADO		
Routt County (FEMA Docket No. B–7435)		
Burgess Creek:		
At confluence with Walton Creek	*6,759	Routt County (Uninc. Areas) and City of Steamboat Springs.
Just upstream of Burgess Creek Road	+7,355	
Elk River (Lower Reach):		
At confluence with Yampa River	+6,533	Routt County (Uninc. Areas).
Approximately 1.5 miles upstream of County Road 44	+6,712	
Walton Creek:		
At confluence with Yampa River	+6,759	Routt County (Uninc. Areas) and City of Steamboat Springs.
Approximately 850 feet upstream of County Road 44	+6,827	
Walton Creek Side Channel:		
Approximately 500 feet downstream of County Road 24	+6,810	Routt County (Uninc. Areas).
At divergence from Walton Creek main Channel	+6,825	
Yampa River Bypass (near Steamboat Springs):		
At confluence with Yampa River	+6,816	Routt County (Uninc. Areas).
Approximately 700 feet downstream of divergence from Yampa River	+6,853	
Yampa River near Hayden:		
Approximately 2,600 feet downstream of U.S. Highway 40	+6,314	Routt County (Uninc. Areas) and Town of Hayden.
Approximately 1.3 miles upstream of U.S. Highway 40	+6,424	
Yampa River Side Channel 1:		
At convergence with Yampa River main channel	+6,626	Routt County (Uninc. Areas) and City of Steamboat Springs.
At divergence from Yampa River main channel	+6,635	
Yampa River Side Channel 2:		
At convergence with Yampa River main channel	+6,716	City of Steamboat Springs.
At divergence from Yampa River main channel	+6,724	
Yampa River Split Flow at Highway 131 (near Steamboat Springs):		
At convergence with Yampa River	+6,830	Routt County (Uninc. Areas).
At divergence from Yampa River	+6,843	
Yampa River near Steamboat Springs:		
Approximately 1.5 miles downstream of County Road 179	+6,483	Routt County (Uninc. Areas) and City of Steamboat Springs.
Approximately 1.5 miles upstream of State Highway 131	+6,865	

ADDRESSES:

Unincorporated Areas Routt County:
Maps are available for inspection at the Routt County Courthouse, 136 6th Street, Steamboat Springs, Colorado.

City of Steamboat Spring:
Maps are available for inspection at City Hall, 124 Tenth Street, Steamboat Springs, Colorado.

Source of flooding and location	*Elevation in feet (NGVD) +Elevation in feet (NAVD)	Communities affected
Town of Hayden:		
Maps are available for inspection at the Town Hall, 178 West Jefferson, Hayden, Colorado.		

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: October 6, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–23305 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Parts 232, 281, 287, 295, 298, 310, 355, 380 and 390

[Docket Number: MARAD–2003–16238]

RIN 2133–AB64

Electronic Options for Transmitting Certain Information Collection Responses to MARAD

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is publishing this final rule to offer electronic submission options to respondents for submission of information that is collected from them under the approved information collections identified in this final rule. These information collections are needed by MARAD in order to conduct business between MARAD and respondents. This action is part of MARAD's implementation of the Government Paperwork Elimination Act (GPEA).

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

FOR FURTHER INFORMATION CONTACT: Richard Weaver, Director, Office of Management and Information Services, Maritime Administration, MAR–310, Room 7301, 400 Seventh Street, SW., Washington, DC 20590; telephone: (202) 366–2811; FAX: (202) 366–3889, or e-mail: *richard.weaver@marad.dot.gov*.

SUPPLEMENTARY INFORMATION: MARAD recognizes that information technology and the Internet are transforming the ways we communicate with our customers. Also, expanding E-Government is one of five government-wide initiatives in the President's Management Agenda and includes implementation of the Government Paperwork Elimination Act (GPEA). Under the E-Government initiative, agencies are to offer the option for respondents to transmit by electronic means information collections that are required by those agencies whenever such transmission is practicable.

On November 5, 2003, MARAD published an interim final rule in the **Federal Register** (68 FR 62535, November 5, 2003) requesting comments regarding the practicability of using electronic submissions for certain information collections prescribed in 46 CFR Parts 200–499. No comments were received on the interim final rule.

In the interim final rule, a mistake was made in the amendatory language that inadvertently deleted several paragraphs from 46 CFR 281.1 (under paragraph designation (f)). This final rule corrects the error by adding the deleted paragraphs back to section 281.1.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This final rule is not likely to result in an annual effect on the economy of $100 million or more. This final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and overall economic impact associated with this rulemaking are considered to be so minimal that no further analysis is necessary. This final rule is intended only to allow timely as well as fair and efficient employment of electronic transmission technologies for the information collections identified in this rule.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553) provides an exception to notice and comment procedures when they are unnecessary or contrary to the public interest. MARAD found good cause under 5 U.S.C. 553(b)(3)(B) for not providing notice and comment when it published its interim final rule since it only implements the Government Paperwork Elimination Act and merely allows the regulated public an opportunity to submit certain required information via electronic means. Under 5 U.S.C. 553(d)(3), MARAD finds that, for the same reasons listed above, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Regulatory Flexibility Act

The Maritime Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule only provides the electronic option for transmitting responses to MARAD for the information collections identified in the final rule.

Federalism

We have analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132 (Federalism) and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations have no substantial effect on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among local officials. Therefore, consultation with State and local officials is not necessary.

Executive Order 13175

MARAD does not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Environmental Impact Statement

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical

exclusions in section 4.05 of Maritime Administrative Order (MAO) 600–1, ''Procedures for Considering Environmental Impacts,'' 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this final rule is required. This final rule involves administrative and procedural regulations that have no environmental impact.

Unfunded Mandates Reform Act of 1995

This final rule does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves this objective of U.S. policy.

Paperwork Reduction Act

This final rule contains information collection requirements covered by OMB approval numbers identified in the final rule under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

46 CFR Part 232

Maritime carriers, Reporting and recordkeeping requirements, Uniform System of Accounts.

46 CFR Part 281

Administrative practice and procedure, Grant programs—transportation, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 287

Fishing vessels, Income taxes, Investments, Maritime carriers, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 295

Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 298

Loan programs—transportation, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 310

Federal Aid Programs, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 355

Citizenship and naturalization, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 380

Administrative practice and procedure, Grant programs—transportation, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 390

Income taxes, Investments, Maritime carriers, Reporting and recordkeeping requirements.

■ Accordingly, 46 CFR Chapter II is amended as follows:

PART 232—UNIFORM FINANCIAL REPORTING REQUIREMENTS

■ 1. The authority citation for part 232 continues to read as follows:

Authority: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 App U.S.C. 1114(b)); 49 CFR 1.66.

■ 2. Amend § 232.2 by revising paragraph (d) to read as follows:

§ 232.2 General instructions.

* * * * *

(d) Submission of questions. (1) A contractor may submit in writing, or by electronic options (such as facsimile and Internet), if practicable, any question involving the interpretation of any provision of this part for consideration and decision to the Director, Office of Financial and Rate Approvals, for the Maritime Security Program, or Director, Office of Ship Financing, for the Maritime Loan Guarantee Program (Title XI), Maritime Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Appeals from such interpretation will be in accordance with the interpretation letter.

(2) A contractor who has a question of financial accounting or reporting procedure pending before the Maritime Administration at the time a financial report is due shall file the report in accordance with established scheduled dates. The contractor shall include in the report a footnote disclosure that adequately describes the question pending, the manner of presentation in the report, and the relative impact on the balance sheet and income statement, respectively.

* * * * *

■ 3. Section 232.6 is amended by revising paragraphs (a) and (b) to read as follows:

§ 232.6 Financial report filing requirement.

(a) Reporting Frequency and Due Dates. The contractor shall file a semiannual financial report and an annual financial report, in the format referred to in § 232.1(a)(2), which MARAD shall make available to the contractor. This Form MA–172 (Revised) shall be prepared in accordance with generally accepted accounting principles and modified to the extent necessary to comply with this regulation. The annual financial report shall be reconciled to the financial statements audited by independent certified public accountants (CPAs) licensed to practice by a state or other political subdivision of the United States, or licensed public accountants licensed to practice by regulatory authority or other political subdivision of the United States on or before December 31, 1970. Both the annual and semiannual financial reports shall be due within 120 days after the close of the contractor's annual or semiannual accounting period. If certified (CPA) statements are not available when required, company certified statements are to be submitted within the due dates, and the CPA statements shall be submitted as soon as available. The respondent may, in place of any Schedule(s) contained in the Form MA–172, submit a schedule or schedules from its audited financial statements, or a computer print-out or schedule, consistent with the instructions provided in the MARAD formats. MARAD will accept electronic options (such as facsimile and Internet) for transmission of required information to MARAD, if practicable.

(b) Certification. Annual and semiannual reports shall be approved by the Respondent and Official of Respondent whom MARAD may contact regarding the report in the reporting formats prescribed as the MA–172 submission.

* * * * *

PART 281—INFORMATION AND PROCEDURE REQUIRED UNDER LINER OPERATING-DIFFERENTIAL SUBSIDY AGREEMENTS

■ 4. The authority citation for part 281 continues to read as follows:

Authority: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114. Interpret or apply sec. 606, 49 Stat. 2004, as amended; 46 U.S.C. 1176.

■ 5. Section 281.1 is amended by revising paragraph (f) to read as follows:

§ 281.1 Information and procedure required under liner operating-differential subsidy agreements.

* * * * *

(f) Current financial reports. Each operator shall prepare current financial reports as specified in this paragraph and shall submit one copy each to the appropriate Region Director of the Maritime Administration and three copies each to the Director, Office of Financial and Rate Approvals, Maritime Administration, Washington, DC 20590. MARAD will accept electronic options (such as facsimile and Internet) for transmission of required information to MARAD, if practicable.

(1) Internal management reports. Each month the operator shall submit copies of such portions of its internal management reports that provide an estimate of its current operating results.

(2) Quarterly balance sheets. The operator shall prepare balance sheets as of March 31, June 30, and September 30 of each calendar year in conformity with section 282.6(A) of the Uniform System of Accounts (Part 282 of this chapter) and shall submit each as soon as practicable but not later than 45 days after the end of the respective quarter.

(3) Quarterly and cumulative income statements. The operator shall prepare income statements for the quarterly periods January 1, to March 31, April 1 to June 30, and July 1 to September 30, and for cumulative periods from January 1 to the end of the second and third quarters of each calendar year in conformity with section 282.6(B) of the Uniform System of Accounts (Part 282 of this chapter) and shall submit each statement as soon as practicable but not later than 45 days after the end of the respective quarter.

(4) Annual financial report. The operator shall submit Maritime Administration Form 172 for each calendar year by March 31 of the succeeding year. If the operator is unable to submit Form 172 by March 31 of the succeeding year he shall, prior to such March 31, request an extension for the filing of Form 172 from the Director, Office of Financial and Rate Approvals and shall submit by such March 31:

(i) A balance sheet for the year ending on December 31, in conformity with section 282.6(A) of the Uniform Systems of Accounts; and

(ii) An income statement for the quarterly period October 1 to December 31 and an income statement for the year ending on December 31, in conformity with section 282.6(B) of the Uniform System of Accounts.

(5) Vessel performance reports. Vessel performance reports shall be prepared for the period January 1 to March 31 of each calendar year, and from January 1 to the end of each succeeding quarter of the calendar year, in the form provided in Exhibit A of paragraph (f)(7) of this section and consistent with the allocation bases provided in paragraph (f)(6) of this section and shall include:

(i) A grand summary of all terminated voyage results for the reporting period including any idle status period occurring during the reporting period and any additional charges or credits from prior terminated periods;

(ii) Summaries of each service by vessel type, as indicated in Exhibit (D) of paragraph (7) of this section, as of December 31 of each year;

(iii) Individual reports by vessel for each idle status period occurring during any reporting period.

(A) Vessel performance reports shall be submitted with the quarterly balance sheets and income statements required under paragraphs (f)(2) and (3) of this section and must be reconciled with voyage revenue and expense from all operations as reported in the income statement.

(B) ''Depreciation Vessels'' is an example of a reconciling item. Vessel performance reports which are properly prepared and filed will satisfy the reporting requirements for sub-schedules 3002 of the Maritime Administration Form 172.

(6) Allocation bases. The allocation bases to be applied in preparation of vessel performance reports required by paragraph (f)(5) of this section are as follows:

(i) Terminal expenses. Terminal expenses defined by accounts 855 through 866 of the Uniform System of Accounts (§ 282.3(E) of this chapter), including depreciation accounts, for each terminal shall be allocated between terminated and unterminated voyages on the basis of freight payable tons loaded and discharged on each vessel and voyage during the reporting period, except that in the case of terminals handling only one cargo carriage technology type (CCTT), which can be expressed in common units such as twenty-foot equivalent container units (TEU's) or the number of individual barges, such common unit may be used for allocating terminal expenses by vessel and voyage for each terminal, as shown in Exhibit B of paragraph (f)(7) of this section.

(ii) Container/barge expense—

(A) Allocation of expense. Container/barge expense defined by accounts 867 through 899 of the Uniform System of Accounts (§ 282.3(F) of this chapter), including depreciation accounts, shall be segregated between container and barge cost pools. Accounts 879, 880, and 894 shall be allocated between container and barge cost pools on an allocation basis developed by the operator.

(B) Allocation of cost pools. Container and barge cost pools shall be allocated among vessels by voyage and idle status for each vessel in the same ratio that the total container or barge capacity of each vessel multiplied by vessel days bears to the total container or barge capacity of the operator's entire fleet multiplied by vessel days. Total container or barge capacity of a vessel means the total container or barge capacity of the vessel, expressed in TEU's for containers and single units for barges, multiplied by the total number of containers or barges acquired for each available container or barge slot on the vessel. Vessel days means the number of days in the period for which an allocation of cost pools is being made. Containers and barges purchased by an operator for utilization in a particular trade route shall be allocated by vessel capacity among the vessels in the trade route for which they were purchased. See Exhibit C of paragraph (f)(7) of this section.

(iii) Administrative and general expenses. Administrative and general expenses defined by accounts 901 through 979 of the Uniform System of Accounts (§ 282.3(G) of this chapter) shall be allocated to terminated voyages for each vessel type by service or for each vessel by voyage, as required by paragraph (f)(5) of this section, based on the ratio that total terminated voyage operating expenses (accounts 701–773 of the Uniform System of Accounts) plus total terminated voyage operating revenue (accounts 601–624 of the Uniform System of Accounts) for each bears to the total terminated voyage operating expense plus total terminated voyage operating revenue for the period, except that account 945 (advertising passengers) will be allocated directly to passenger vessels based on passengers carried, account 955 (contributions to pools) may be allocated as an administrative and general expense or directly to vessel and voyage based on pool statements, and that portion of accounts 960 and 961 (interest expense) representing interest on vessels shall be allocated to vessels and voyages in the same ratio that depreciation is distributed among all vessels in the fleet. In addition to the above exceptions, significant interest expenses related to purchases of containers and barges should be charged directly to container and barge pools prior to allocation of the container and barge pools.

(7) Exhibits.

A. Vessel performance report.[1]
B. Sample allocation of terminal expenses by vessel and voyage.
C. Sample allocation of container/barge expenses by vessel and voyage.
D. Examples of vessel types currently operated.

* * * * *

PART 287—ESTABLISHMENT OF CONSTRUCTION RESERVE FUNDS

■ 6. The authority citation for part 287 continues to read as follows:

Authority: Secs. 204, 511, 49 Stat. 1987, as amended, 54 Stat. 1106, as amended; 46 U.S.C. 1114, 1161.

■ 7. Section 287.4 is amended by revising paragraph (a) to read as follows:

§ 287.4 Application to establish fund.

(a) Any person claiming to be entitled to the benefits of section 511 of the Act may make application, in writing, to the Administration for permission to establish a construction reserve fund. The original application shall be executed and verified by the taxpayer, or if the taxpayer is a corporation, by one of its principal officers, in triplicate, and shall be accompanied by eight conformed copies when filed with the Administration. MARAD will accept electronic options (such as facsimile and Internet) for transmission of required information to MARAD, if practicable.

* * * * *

PART 295—MARITIME SECURITY PROGRAM (MSP)

■ 8. The authority citation for part 295 continues to read as follows:

Authority: 46 App. U.S.C. 1171 *et seq.*, 46 App. U.S.C. 1114 (b), 49 CFR 1.66.

■ 9. Section 295.11 is amended by revising paragraph (b) introductory text to read as follows:

§ 295.11 Applications.

* * * * *

(b) Action by the Applicant. Applicants for MSP Payments shall submit information on the following (Note: MARAD will accept electronic options (such as facsimile and Internet) for transmission of required information to MARAD, if practicable):

* * * * *

■ 10. Section 295.23 is amended by revising the introductory text to read as follows:

§ 295.23 Reporting requirements.

The Contractor shall submit to the Director, Office of Financial and Rate Approvals, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590, one of the following reports, including management footnotes where necessary to make a fair financial presentation [Note: MARAD will accept electronic options (such as facsimile and Internet) for transmission of required information to MARAD, if practicable.]:

* * * * *

PART 298—OBLIGATION GUARANTEES

■ 11. The authority citation for part 298 continues to read as follows:

Authority: 46 App. U.S.C. 1114(b), 1271 *et seq.*; 49 CFR 1.66.

■ 12. Section 298.3 is amended by revising paragraph (a)(1) to read as follows:

§ 298.3 Applications.

(a) * * *

(1) Complete Form MA–163 and send it to the Secretary, Maritime Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. [Note: MARAD will accept electronic options (such as facsimile and Internet) for transmission of required information (excluding closing documents and documents submitted in connection with defaults) to MARAD, if practicable.]

* * * * *

■ 13. Section 298.13 is amended by revising paragraph (c)(2) introductory text to read as follows:

§ 298.13 Financial requirements.

* * * * *

(c) * * *

(2) Financial Information. You must provide us with financial statements, prepared in accordance with U.S. generally accepted accounting principles (GAAP), and include notes that explain the basis for arriving at the figures except that for Eligible Export Vessels, your financial statements must be in accordance with GAAP if formed in the U.S., or reconciled to GAAP if formed in a foreign country unless a satisfactory justification is provided explaining the inability to reconcile. The financial statements must include the following [Note: MARAD will accept electronic options (such as facsimile and Internet) for transmission of required information to MARAD, if practicable.]:

* * * * *

PART 310—MERCHANT MARINE TRAINING

■ 14. The authority citation for part 310 continues to read as follows:

Authority: 46 App. U.S.C. 1295; 49 CFR 1.66.

■ 15. Section 310.57 is amended by revising paragraph (a) to read as follows:

§ 310.57 Application and selection of midshipmen.

(a) *Application.* All candidates shall submit an application for admission to the Academy's Admissions Office. Prospective candidates also should submit an application, but are not considered official candidates until their nominations are received. Candidates shall submit with their applications an official transcript and personality record from the candidate's high school and, if applicable, such records from any school attended after high school graduation. Application forms are available upon request by writing to the Admissions Office at the Academy. MARAD will accept electronic options (such as facsimile and Internet) for transmission of only Part I of required information to MARAD, if practicable.

* * * * *

PART 355—REQUIREMENTS FOR ESTABLISHING UNITED STATES CITIZENSHIP

■ 16. The authority citation for part 355 continues to read as follows:

Authority: Secs. 2, 204, 39 Stat. 729, as amended, 49 Stat. 1987, as amended, 73 Stat. 597, 46 U.S.C. 802, 803, 1114, 11.

■ 17. Section 355.1 is amended by revising paragraphs (b) and (c) to read as follows:

§ 355.1 General.

* * * * *

(b) As used in this part, the term ''primary corporation'' includes, but not exclusively, an applicant, for, or one already receiving, benefits under the Merchant Marine Act, 1936, as amended, as well as participants in certain transactions, such as banking institutions designated as lenders, mortgagees, and trustees pursuant to Public Law 89–346 (73 Stat. 597), as amended.

(c) To satisfy the statutory requirements, an Affidavit of U.S. Citizenship of a primary corporation by one of its officers duly authorized to execute such Affidavit, should be submitted. This affidavit should contain facts from which the corporation's citizenship can be determined. MARAD

[1] Exhibit A filed as part of the original document.

will accept electronic options (such as facsimile and Internet) for transmission of required information to MARAD, if practicable.

PART 380—PROCEDURES

■ 18. The authority citation for part 380 continues to read as follows:

Authority: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

■ 19. Section 380.22 is amended by revising paragraphs (b) and (c) to read as follows:

§ 380.22 Responsibility.

* * * * *

(b) With respect to books, records, and accounts which, subject to the provision of paragraph (a) of this section, are to be disposed of upon the expiration of the minimum retention period prescribed herein, there shall be filed with the Records Officer, Maritime Administration, Washington, DC, 20590, a written notification, at least thirty (30) days prior to the contemplated, disposal requesting permission to dispose of records. MARAD will accept electronic options (such as facsimile and Internet) for transmission of required information to MARAD, if practicable. The request shall be in such form that the books, records, and accounts can be readily identified. Within thirty (30) days after receipt of such notification the Records Officer shall grant approval for disposal, or advise the necessity for continued retention of all or any specified portion thereof. Failure of the Record Officer to reply within the thirty (30) days period following receipt by the Administration of such request shall constitute approval.

(c) Applications for special authority to dispose of certain books, records, and accounts prior to the expiration of prescribed minimum retention periods, and any inquiries as to the interpretation or applicability of this subpart to specific items shall be submitted to the Records Officer, Maritime Administration. MARAD will accept written or electronic options (such as facsimile and Internet) for transmission of required information to MARAD, if practicable. The applicant shall describe in detail the items to be disposed of and explain why continued retention is unnecessary.

■ 20. Section 380.23 is revised to read as follows:

§ 380.23 Supervision of records.

(a) Contractors and others subject to the provisions of this subpart shall designate, through formal action, the official company position by title, the incumbent of which shall be responsible for supervision of its document retention and disposal program. Immediately upon designation of the position, a copy of the formal action and name of the incumbent shall be filed with the Records Officer, Maritime Administration. MARAD will accept written or electronic options (such as facsimile and Internet) for transmission of required information, if practicable.

(b) The person in charge of the retention and disposal program shall maintain a record of all books, records, and accounts held in storage, and in such form that the items and their location are readily identifiable. A copy of the written, or by electronic options (such as facsimile and Internet), if practicable, notification requesting permission to dispose of any books, records, and accounts, and the original approval from the Administration, as required in § 380.22(b), together with a statement showing date, place and method of disposal will suffice as a record of such disposed items. These retention and disposal records shall be available at all times for inspection by Administration officials and auditors.

PART 390—CAPITAL CONSTRUCTION FUND

■ 21. The authority citation for part 390 continues to read as follows:

Authority: Sections 204(b) and 607, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b) and 1177); 49 CFR 1.66.

■ 22. Section 390.2 is amended by revising paragraph (a)(1) to read as follows:

§ 390.2 Application for an agreement.

(a) *In general*—(1) *Application instructions.* The Maritime Administrator has adopted instructions for making application for an agreement. These instructions are contained in appendix I to this part. MARAD will accept electronic options (such as facsimile and Internet) for transmission of required information to MARAD, if practicable.

* * * * *

By Order of the Maritime Administrator.

Dated: October 13, 2004.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–23361 Filed 10–18–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 310

[Docket Number: MARAD–2004–17185]

RIN 2133–AB66

Amended Service Obligation Reporting Requirements for U.S. Merchant Marine Academy Graduates

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: In this final rule, the Maritime Administration (MARAD, we, us, or our) amends the service obligation reporting requirements for United States Merchant Marine Academy (USMMA) graduates. The new reporting requirements create standard reporting dates that coincide with the U.S. Naval Reserve/Merchant Marine Reserve (USNR/MMR) service reporting dates, which will make reporting to the USNR and to MARAD less burdensome. This final rule also corrects an error that appeared in the interim final rule that preceded this action, which mistakenly indicated that it applied to both USMMA graduates as well as to State maritime academy graduates. Finally, this rulemaking provides for the electronic submission of reports as the primary means of submission to MARAD.

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

ADDRESSES: This final rule is available for inspection and copying between 10 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays at the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590. An electronic version of this document along with all documents entered into this docket are available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Reed-Perry, Compliance Specialist, Office of Policy and Plans, Maritime Administration, Department of Transportation, 400 7th St., SW., Room 7123, Washington, DC 20590; telephone: (202) 366–0845; FAX: (202) 366–7403; and e-mail: *maritime.graduate@marad.dot.gov.*

SUPPLEMENTARY INFORMATION: On March 2, 2004, MARAD published an interim final rule entitled Amended Service Obligation Reporting Requirements for U.S. Merchant Marine Academy and State Maritime Academy Graduates (69

FR 9758). Despite this title, and other references to State maritime academy graduates that appeared in the rulemaking, MARAD only intended to change the reporting requirements of USMMA graduates, and not State academy graduates. This intent is reflected by the fact that the interim final rule only changed 46 CFR section 310.58(d), which governs USMMA reporting requirements, and not 46 CFR section 310.7(b)(6), which governs State academy reporting requirements. In this final rule, MARAD is amending the service obligation reporting requirements for USMMA graduates only. MARAD has issued a separate rulemaking to address the reporting requirements of State academy graduates.

In the interim final rule, MARAD changed the requirement that USMMA graduates submit their service obligation report forms thirteen (13) months following graduation and each succeeding twelve (12) months for five (5) consecutive years thereafter to a system where graduates would submit reports on March 31 following graduation and six (6) consecutive years thereafter.

Comments on the interim final rule were due by April 1, 2004, and two sets of comments were timely filed.

Public Comments on the Interim Final Rule

The first commenting party recommended that MARAD make reports due by March 31, rather than on March 31. The commenting party also recommended that MARAD provide a ninety (90) day period in which to submit reports, noting that many graduates, while out at sea, may have difficulty submitting their reports by a specified due date, rather than during a reporting period. MARAD agrees with this recommendation and has decided to adopt a reporting period rather than a specified due date. However, instead of a ninety (90) day reporting period, MARAD has decided to adopt a sixty (60) day reporting period (or 61 days, during leap years) that coincides with the USNR/MMR's reporting period. MARAD believes that the sixty (60) day reporting period provides ample time for graduates to submit their reports. Additionally, since the reporting period coincides with the USNR/MMR's reporting period, submitting reports should be less burdensome because graduates will be able to compile and submit information to both MARAD and the USNR during the same time frame.

The second commenting party addressed issues related to Student Incentive Payments such as default of service obligations, recoupment of funds from defaulting students, and other issues, none of which are addressed in this rulemaking. Thus, MARAD will not address the issues raised by the second commenting party at this time.

As indicated above, based on comments received and on further consideration, MARAD has decided to adopt a reporting period that coincides with the USNR/MMR's reporting period. Under this new reporting system, graduates will file reports between January 1 and March 1 following graduation, and during the same time frame between January 1 and March 1 for six (6) consecutive years thereafter (or until all components of the service obligation are fulfilled, whichever is latest). Graduates will file a minimum of seven (7) reports in order to give information on all six (6) years of the service obligation. Graduates must submit annually the Maritime Administration Service Obligation Compliance Report and Merchant Marine Reserve, U.S. Naval Reserve (USNR), Annual Report (Form MA–930). Graduates may submit their Service Obligation Compliance Reports electronically via the Maritime Service Compliance System at *https://mscs.marad.dot.gov.*

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This final rule is not likely to result in an annual effect on the economy of $100 million or more. This final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and overall economic impact associated with this rulemaking are considered to be so minimal that no further analysis is necessary.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553) provides an exception to notice and comment procedures when they are unnecessary or contrary to the public interest. MARAD finds that under 5 U.S.C. 553(b)(3)(B), good cause exists for not providing notice and comment since this final rule merely changes the service obligation reporting dates of USMMA graduates and provides for the electronic submission of reports as the primary means of submission to MARAD. For the same reasons, MARAD finds good cause under 5 U.S.C. 553(d) to make this final rule effective upon publication.

Regulatory Flexibility Act

The Maritime Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule merely changes the service obligation reporting dates for USMMA graduates and thus only affects USMMA graduates and has no effect on small businesses or other entities.

Federalism

We have analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132 (Federalism) and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations have no substantial effect on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among local officials. Therefore, consultation with State and local officials is not necessary.

Executive Order 13175

MARAD does not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Environmental Impact Statement

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and have concluded that under the categorical exclusions in section 4.05 of Maritime Administrative Order (MAO) 600–1, ''Procedures for Considering Environmental Impacts,'' 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this final rule is required. This final rule involves administrative and procedural regulations that have no environmental impact.

Unfunded Mandates Reform Act of 1995

This final rule does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or

more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves this objective of U.S. policy.

Paperwork Reduction Act

This final rule contains information collection requirements covered by the Office of Management and Budget approval number 2133–0509. The changes have no impact on the reporting burden.

List of Subjects in 46 CFR Part 310

Federal Aid Programs, Reporting and recordkeeping requirements, Schools, and Seamen.

■ Accordingly, for the reasons discussed in the preamble, 46 CFR 310.58 is amended as follows:

PART 310—[AMENDED]

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 46 App. U.S.C. 1295; 49 CFR 1.66.

■ 2. Amend § 310.58 by revising paragraph (d) to read as follows:

§ 310.58 Service obligation for students executing or reexecuting contracts

* * * * *

(d) Reporting requirements. (1) Each graduate must submit an annual Service Obligation Compliance Report form (MA–930) to the Maritime Administration between January 1 and March 1 following his or her graduation. After the initial report is submitted, each graduate must continue to submit annual reports during the same time frame between January 1 and March 1 for six (6) consecutive years thereafter, or until all components of the service obligation are fulfilled, whichever is latest. Each graduate will file a minimum of seven (7) reports in order to give information on all six (6) years of the service obligation. Graduates are encouraged to submit their Service Obligation Compliance Report forms (MA–930) to MARAD using the web-based Internet system at *https://mscs.marad.dot.gov.* Reports may also be mailed to: Compliance Specialist, Office of Policy and Plans, Maritime Administration, Department of Transportation, 400 7th St., SW., Room 7123, Washington, DC 20590.

(i) Example 1: Midshipman graduates on June 30, 2004. His or her first reporting date is between January 1, 2005 and March 1, 2005 and thereafter between January 1 and March 1 for six (6) consecutive years (or until all components of the service obligation are fulfilled, whichever is latest) for a minimum of seven (7) reports.

(ii) Example 2: Midshipman has a deferred graduation on November 30, 2004. His or her first reporting period is between January 1, 2005 and March 1, 2005 and thereafter between January 1 and March 1 for six (6) consecutive years (or until all components of the service obligation are fulfilled, whichever is latest) for a minimum of seven (7) reports.

(iii) Example 3: Midshipman graduated in June 2003 and has already begun his or her service obligation reporting. His or her reports are now due between January 1 and March 1 of each reporting year.

(2) The Maritime Administration will provide reporting forms upon request. However, non-receipt of such forms will not exempt a graduate from submitting service obligation information as required by this paragraph. Graduates are encouraged to submit their Service Obligation Compliance Report forms (MA–930) electronically at https://mscs.marad.dot.gov. The reporting form has been approved by the Office of Management and Budget (2133–0509).

* * * * *

Dated: October 13, 2004.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–23360 Filed 10–18–04; 8:45 am]

BILLING CODE 4910–81–P

Proposed Rules

Federal Register
Vol. 69, No. 201
Tuesday, October 19, 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 HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–106]

RIN 1625–AA09

Drawbridge Operation Regulations; Connecticut River, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to temporarily change the drawbridge operation regulations for the operation of the Route 82 Bridge, at mile 16.8, across the Connecticut River at East Haddam, Connecticut. This proposed rule would allow the bridge to operate on fixed opening schedule and permit several bridge closures from December 1, 2004 through March 31, 2006, to facilitate rehabilitation construction at the bridge. This work was previously scheduled last year to be in effect from November 1, 2002 through October 31, 2003. This work was postponed for over one year due to project funding issues. This action is necessary to facilitate major rehabilitation of the bridge.

DATES: Comments must reach the Coast Guard on or before November 18, 2004.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, maintains the public docket 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 the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, (212) 668–7195.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard finds that good reason exists for publishing an NPRM with a shortened comment period of 30 days. The shortened comment period will allow time to publish a final rule that will comply with notice requirements under 5 U.S.C. (d)(3) in time for work beginning on December 1, 2004, for bridge rehabilitation work.

The Coast Guard also believes this shortened comment period is reasonable because a notice of proposed rulemaking was previously published on September 10, 2002, for this same project with a similar opening schedule and no comments were received in response to that proposed rule.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–04–106), 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 if 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 the First Coast Guard District, Bridge Branch, 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 a later notice in the **Federal Register**.

Background and Purpose

The Route 82 Bridge has a vertical clearance of 22 feet at mean high water, and 25 feet at mean low water in the closed position. The existing drawbridge operating regulations listed at 33 CFR 117.205(c), require the bridge to open on signal at all times; except that, from May 15 to October 31, 9 a.m. to 9 p.m., the bridge is required to open for recreational vessels on the hour and half hour only. The bridge is required to open on signal at all times for commercial vessels.

The Route 82 Bridge was scheduled for major repairs in the summer of 2001, and again in 2002, but due to project funding shortfalls the work was delayed. Subsequent to that, the bridge has continued to deteriorate. Funding has now been made available and the necessary repairs need to be performed with all due speed to assure safe reliable continued operation of the bridge.

The bridge owner, Connecticut Department of Transportation, has requested a temporary rule to allow the bridge to open at specific times. Commercial vessels may obtain bridge openings at any time provided they provide a two-hour advance notice to the bridge tender.

The bridge owner has also requested additional closures which would restrict both recreational and commercial traffic. The requested dates include: one seven day bridge closure from March 21 through March 28, 2005; three 8-hour closures on October 18, 19 and 20, 2005; and one 24-hour closure on December 14, 2005.

The exact dates and times for the above closures may change slightly due to unforeseen issues. The Coast Guard will publish the exact times and dates in the Local Notice to Mariners at least thirty days in advance of the anticipated occurrence to assist mariners in their planning should the above dates and times change.

Under this proposed rule, in effect from December 1, 2004 through March 31, 2006, the Route 82 Bridge would operate as follows:

From November 1 through July 6, the draw shall open on signal at 5:30 a.m., 1:30 p.m., and 8 p.m., daily.

From July 7 through October 31, the draw shall open on signal Monday through Thursday at 5:30 a.m., 1:30 p.m., and 8 p.m. On Friday the draw shall open on signal at 5:30 a.m., 1:30 p.m., 8 p.m., and 11:30 p.m. On Saturday and Sunday the draw shall open on signal at 5:30 a.m., 8:30 a.m., 1:30 p.m., 4 p.m., 8 p.m., and 11:30 p.m.

At all times, other than during the closure periods identified above, the draw shall open on signal for commercial vessels provided at least a two-hour advance notice is given.

Discussion of Proposed Rule

This proposed change would amend 33 CFR § 117.205 by suspending paragraph (c) and adding a new temporary paragraph (d) that would list the temporary fixed bridge opening schedule for the Route 82 Bridge.

Additionally, the bridge owner has also requested closures which would restrict both recreational and commercial traffic. The requested dates include: one 7-day bridge closure from March 21 through March 28, 2005; three 8-hour closures on October 18, 19 and 20, 2005; and one 24-hour closure on December 14, 2005.

At all other times other than during the specified closure periods, the draw would open on signal at any time for commercial vessels provided at least a two-hour advance notice is given.

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 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.

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 conclusion is based on the fact that vessel traffic will still be able to transit through the Route 82 Bridge under a fixed opening schedule that is expected to meet the reasonable needs of navigation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 section 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 conclusion is based on the fact that vessel traffic will still be able to transit through the Route 82 Bridge under a fixed opening schedule that is expected to meet the reasonable needs of navigation.

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 (Public Law 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 us in writing at, Commander (obr), First Coast Guard District, Bridge Branch, 408 Atlantic Avenue, Boston, MA. 02110–3350. The telephone number is (617) 223–8364. 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.

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 or 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 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 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 E.O. 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 rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

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 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 no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environment documentation because it has been determined that the promulgation of operating regulations or procedures for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. From December 1, 2004 through March 31, 2006, § 117.205 is temporarily amended by suspending paragraph (c) and adding a new paragraph (d) to read as follows:

§ 117.205 Connecticut River

* * * * *

(d) The draw of the Route 82 Bridge, mile 16.8, at East Haddam shall operate as follows:

(1) From November 1 through July 6 the draw shall open on signal at 5:30 a.m., 1:30 p.m., and 8 p.m., daily.

(2) From July 7 through October 31, Monday through Thursday, the draw shall open on signal at 5:30 a.m., 1:30 p.m., and 8 p.m. On Friday the draw shall open on signal at 5:30 a.m., 1:30 p.m., 8 p.m., and 11:30 p.m. On Saturday and Sunday the draw shall open on signal at 5:30 a.m., 8:30 a.m., 1:30 p.m., 4 p.m., 8 p.m., and 11:30 p.m.

(3) The draw need not open for the passage of vessel traffic on the following dates: March 21, 2005 through March 28, 2005; October 18, 19 and 20, 2005; and December 14, 2005.

(4) At all times, other than the dates identified in paragraph (d)(3) of this section, the draw shall open on signal for commercial vessels provided at least a two-hour advance notice is given.

Dated: October 6, 2004.

David P. Pekoske,

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

[FR Doc. 04–23372 Filed 10–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7661]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and record keeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location of referenced elevation	♦Elevation in feet (NAVD)		Communities affected
	Existing	Modified	
Alexander Creek:			
Approximately 8,025 feet upstream of Ward Road ...	None	♦942	Cass County (Unincorporated Areas), City of Raymore.
Approximately 5,600 feet upstream of Prairie Road	None	♦1,004	
East Branch South Grand River:			
Approximately 9,900 feet upstream of confluence of Wolf Creek.	None	♦886	Cass County (Unincorporated Areas) City of Peculiar.
Approximately 510 feet upstream of Kendall Road ..	None	♦954	
East Branch of West Fork East Creek:			
At confluence with West Fork East Creek	None	♦974	Cass County (Unincorporated Areas) City of Belton.
Approximately 3,050 feet upstream of confluence with West Fork East Creek.	None	♦990	
East Creek Tributary:			
Approximately 990 feet downstream of Pickering Road.	None	♦918	Cass County (Unincorporated Areas) City of Raymore.
Approximately 10,000 feet upstream of confluence of North Fork East Creek Tributary.	None	♦1,000	
East Fork of East Tributary of East Branch South Grand River:			
At confluence with East Tributary of East Branch South Grand River.	None	♦937	Cass County (Unincorporated Areas).
Approximately 3,250 feet upstream of 200th Street	None	♦1,007	
East Tributary of East Branch South Grand River:			
At confluence with East Branch South Grand River	None	♦889	Cass County (Unincorporated Areas).
Approximately 2,920 feet upstream of Prairie Road	None	♦993	
East Tributary of Lumpkins Fork:			
Approximately 4,770 feet downstream of North Madison Street.	None	♦954	City of Raymore.
Approximately 40 feet upstream of 155th Street	None	♦999	
East Tributary of Massey Creek:			
Approximately 3,225 feet downstream of Missouri Highway D.	None	♦944	Cass County (Unincorporated Areas).
Approximately 85 feet upstream of Cedar Road	None	♦997	
Lower East Fork of East Creek Tributary:			
At confluence with East Creek Tributary	None	♦931	Cass County (Unincorporated Areas) City of Raymore.
Approximately 12,800 feet upstream of U.S. Highway 71.	None	♦987	
Lower East Tributary of Mill Creek:			
At confluence with Mill Creek	None	♦885	Cass County (Unincorporated Areas).
Approximately 8,120 feet upstream of Confluence with Mill Creek.	None	♦937	
Lumpkins Fork:			
At 155th Street	None	♦945	Cass County (Unincorporated Areas).
Approximately 70 feet upstream of North Madison Street.	None	♦979	
Massey Creek:			
Approximately 5,070 feet downstream of 223rd Street.	None	♦904	Cass County (Unincorporated Areas).
At State Line Road	None	♦969	
Middle East Tributary of Mill Creek:			
Approximately 3,950 feet upstream of confluence with Mill Creek.	None	♦912	Cass County (Unincorporated Areas).
Approximately 6,320 feet upstream of confluence with Mill Creek.	None	♦940	
Mill Creek:			
At County Boundary	None	♦871	Cass County (Unincorporated Areas).
Approximately 95 feet downstream of 187th Street ..	None	♦1,045	
North Branch of Upper East Fork of East Creek Tributary:			

Source of flooding and location of referenced elevation	♦Elevation in feet (NAVD)		Communities affected
	Existing	Modified	
Approximately 1,700 feet downstream of Hubach Hill Road.	None	♦976	Cass County (Unincorporated Areas).
Approximately 25 feet upstream of Hubach Hill Road.	None	♦986	
North Fork of East Creek Tributary:			
At confluence with East Creek Tributary	None	♦953	Cass County (Unincorporated Areas).
Approximately 11,000 feet upstream of confluence with East Creek Tributary.	None	♦990	
North Tributary of Wolf Creek:			
Approximately 410 feet downstream of East 233rd Street.	None	♦927	Cass County (Unincorporated Areas) City of Peculiar.
Approximately 40 feet upstream of 227th Street	None	♦954	
Poney Creek:			
Approximately 4,925 feet downstream of Bennett Road.	None	♦831	Cass County (Unincorporated Areas) City of Freeman.
Approximately 7,550 feet upstream of Poney Creek Road.	None	♦849	
Silver Lake	None	♦1,029	City of Raymore.
South Grand River:			
Approximately 5,160 feet downstream of State Highway 2.	None	♦829	Cass County (Unincorporated Areas).
Approximately 765 feet upstream of Lake Annette Road.	None	♦850	
Tributary of Alexander Creek:			
Approximately 1,500 feet downstream of State Highway 58.	None	♦988	Cass County (Unincorporated Areas) City of Raymore.
Approximately 85 feet upstream of State Highway 58.	None	♦996	
Upper East Fork of East Creek Tributary:			
Approximately 2,685 feet downstream of Good Ranch Road.	None	♦947	Cass County (Unincorporated Areas), City of Raymore.
Approximately 50 feet upstream of Hubach Hill Road.	None	♦993	
Upper East Tributary of Mill Creek:			
At Highland Ridge Drive	None	♦933	Cass County (Unincorporated Areas).
Approximately 5,800 feet upstream of Highland Ridge Drive.	None	♦988	
West Tributary of East Branch South Grand River:			
Approximately 2,095 feet downstream of East 223rd Street.	None	♦896	Cass County (Unincorporated Areas).
Approximately 75 feet upstream of East 223rd Street.	None	♦915	
West Tributary of Lumpkins Fork:			
At 155th Street	None	♦946	Cass County (Unincorporated Areas).
Approximately 1,065 feet upstream of 155th Street	None	♦998	
Wolf Creek:			
Approximately 7,100 feet upstream of confluence with East Branch South Grand River.	None	♦889	Cass County (Unincorporated Areas) City of Peculiar.
Approximately 1,170 feet upstream of 233rd Street	None	♦946	

Addresses

Cass County (Unincorporated Areas)

Maps are available for inspection at 102 East Wall Street, Harrisonville, Missouri.

Send comments to The Honorable Gary Mallory, Commissioner, Cass County, 102 East Wall Street, Harrisonville, Missouri 64701.

City of Belton

Maps are available for inspection at City Hall, 506 Main Street, Belton, Missouri.

Send comments to The Honorable Robert Gregory, Mayor, City of Belton, 506 Main Street, Belton, Missouri 64012.

City of Freeman

Maps are available for inspection at City Hall, 105 East Main Street, Freeman, Missouri.

Send comments to The Honorable Thomas Bray, Mayor, City of Freeman, 105 East Main Street, Freeman, Missouri 64725.

City of Peculiar

Maps are available for inspection at City Hall, 600 Schug Avenue, Peculiar, Missouri.

Send comments to The Honorable George Lewis, Mayor, City of Peculiar, 600 Schug Avenue, P.O. Box 372, Peculiar, Missouri 64078.

City of Raymore

Maps are available for inspection at City Hall, 100 Municipal Circle, Raymore, Missouri.

Send comments to The Honorable Juan Alonzo, Mayor, City of Raymore, 100 Municipal Circle, Raymore, Missouri 64083.

Osage River:			

Source of flooding and location of referenced elevation	♦Elevation in feet (NAVD)		Communities affected
	Existing	Modified	
Approximately 28,150 feet downstream of U.S. Highway 50.	♦544	♦543	Osage County (Unincorporated Areas).
Approximately 131,850 feet upstream of U.S. Highway 50.	None	♦557	

Maps are available for inspection at Osage County Courthouse, 106 East Main Street, Linn, Missouri.
Send comments to Mr. Bradley J. Strope, Floodplain Administrator, P.O. Box 1011, Linn, Missouri 65051.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: October 6, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–23307 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7449]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifcations for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E. Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood premium rates for the new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedures, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganziation Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § *67.4.*

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/ county	Source of flooding	Location	+Elevation in feet (NAVD)	
				Existing	Modified
North Dakota ...	Lincoln (City), Burleigh County.	Apple Creek ...	Just upstream of Railroad	None	+1,644

State	City/town/ county	Source of flooding	Location	+Elevation in feet (NAVD)	
				Existing	Modified
			Approximately 5,000 feet downstream of confluence of Hay Creek.	None	+1,646
+North American Vertical Datum					
Maps are available for inspection at City Hall, 74 Santee Road, Lincoln, North Dakota 58504.					
Send comments to The Honorable Glen Christmann, Mayor, City of Lincoln, 74 Santee Road, Lincoln, North Dakota 58504.					
Utah	Paragonah (Town),. Iron County	Red Creek	Approximately 1,900 feet downstream of Center Street	None	+5,900
			Approximately 1,600 feet upstream of Center Street	None	+5,989
		Water Canyon	Approxiamately 850 feet upstream of 100 West Street	None	+5,878
			Approximately 1,200 feet upstream of 100 West Street	None	+5,891
+North American Vertical Datum					
Maps are available for inspection at Town Hall, 44 North 100 West, Paragonah, Utah 84760.					
Send comments to The Honorable Constance Robinson, Mayor, Town of Paragonah, P.O. Box 600247, Paragonah, Utah 84760.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: October 6, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–23306 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–12–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT45

Endangered and Threatened Wildlife and Plants; Notice of the Availability of Draft Economic Analysis for the Proposed Designation of Critical Habitat for the Riverside Fairy Shrimp (*Streptocephalus woottoni*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft economic analysis and reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft economic analysis of the proposed designation of critical habitat for the Riverside fairy shrimp *(Streptocephalus woottoni),* and the reopening of the public comment period on the proposed rule to designate critical habitat for the Riverside fairy shrimp. Comments previously submitted for this proposed rule need not be resubmitted as they have already been incorporated into the public record and will be fully considered in any final decision.

DATES: We will accept comments and information until 5 p.m. on November 18, 2004. Any comments received after the closing date may not be considered in the final decision on this action.

ADDRESSES: Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to the Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92009;

2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office at the above address, or fax your comments to 760/431–9618; or

3. You may send your comments by electronic mail (e-mail) to *fw1rvfs@r1.fws.gov.* For directions on how to submit electronic filing of comments, by e-mail see the ''Public Comments Solicited'' section. In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone 760/431–9440; facsimile 760/431–9618).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation and on our draft economic analysis of the proposed designation. We are particularly interested in comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of exclusion outweigh the benefits of specifying such area as part of the critical habitat;

(2) Specific information on the amount and distribution of Riverside fairy shrimp and its habitat, and which habitat is essential to the conservation of this species and why;

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

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) How our approach to critical habitat designation could be improved or modified to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments;

(6) We request information on how many of the State and local environmental protection measures referenced in the draft Economic Analysis were adopted largely as a result of the listing of the Riverside fairy shrimp, and how many were either already in place or enacted for other reasons;

(7) Whether the economic analysis identifies all State and local costs attributable to the proposed critical habitat designation. If not, what other costs are overlooked;

(8) Are the adjustments to local governments' economic data made by the draft Economic Analysis, as set out in its appendices, reasonable? If not, please provide alternative interpretations and the justification for the alternative and/or the reasons the interpretation in the draft Economic Analysis is incorrect;

(9) Whether the economic analysis makes appropriate assumptions

regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(10) Whether the economic analysis appropriately identifies all costs that could result from the designation;

(11) Whether the economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation;

(12) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(13) The economic analysis should identify all costs related to the designation of critical habitat for the Riverside fairy shrimp which was intended to take place at the time the species was listed. As a result, the assumption is the economic analysis should be consistent with our listing regulations. We request comment on whether our analysis achieves that consistency;

(14) We request comment on whether it is appropriate that the analysis does not include the cost of project modification to projects that are the result of informal consultation;

(15) We request comment on whether there is information on known or estimated impacts to development activities likely to occur on the lands proposed for designation at the former March Air Force Base;

(16) Some of the lands we have identified as essential for the conservation of the Riverside fairy shrimp are not being proposed as critical habitat. These are: lands on Marine Corps Air Station Miramar; ''mission-critical'' training areas on Marine Corps Base, Camp Pendleton; areas within San Diego Multiple Species Conservation Program and the Orange County Central-Coastal Natural Communities Conservation Program; and areas in the draft Western Riverside Multiple Species Habitat Conservation Plan. These areas have been excluded because we believe the benefit of excluding these areas outweighs the benefit of including them. We specifically solicit comment on the inclusion or exclusion of such areas, and: (a) Whether these areas are essential; (b) whether these areas warrant exclusion; and (c) the basis for not designating these areas as critical habitat (section 4(b)(2) of the Act); and

(17) We request information from the Department of Defense to assist the Secretary of the Interior in evaluating critical habitat on lands administered by or under the control of the Department of Defense, specifically information regarding impacts to national security associated with proposed designation of critical habitat.

All previous comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft Economic Analysis and the proposed rule by any one of several methods (see **ADDRESSES** section). Our final designation of critical habitat for the Riverside fairy shrimp will take into consideration all comments and any additional information received.

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, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold 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 comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received, as well as supporting documentation used in preparation of the proposal to designated critical habitat, will be available for public inspection, by appointment, during normal business hours at the above address.

If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of any special characters or any form of encryption. Also, please include ''Attn: RIN 1018–AT45'' and your name and return address in your e-mail message regarding the Riverside fairy shrimp proposed rule. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours, in our Carlsbad Fish and Wildlife Office at the above address.

Copies of the proposed critical habitat rule for the Riverside fairy shrimp and the draft economic analysis are available on the Internet at *http://carlsbad.fws.gov* or in hard copy by contacting the Carlsbad Fish and Wildlife Office as identified in the **ADDRESSES** section above. In the event that our internet connection is not functional, please obtain copies of documents directly from the Carlsbad Fish and Wildlife Office.

Background

On April 27, 2004, we published a proposed rule in the **Federal Register** (69 FR 23024) to designate critical habitat for the Riverside fairy shrimp. We proposed to designate a total of approximately 5,795 acres (2,345 hectares) of critical habitat in Los Angeles, Orange, Riverside, San Diego, and Ventura Counties, CA. The first comment period on the Riverside fairy shrimp proposed critical habitat rule closed on May 27, 2004.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that we designate or revise critical habitat on the basis of the best scientific and commercial data available, after taking into consideration the economic impact, impact to national security, and any other relevant impacts of specifying any particular area as critical habitat. We have prepared a draft Economic Analysis of the April 27, 2004 (69 FR 23024), proposed designation of critical habitat for the Riverside fairy shrimp.

The draft Economic Analysis considers the potential economic effects of actions relating to the conservation of the Riverside fairy shrimp, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the Riverside fairy shrimp in essential habitat areas. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (*e.g.*, lost economic opportunities associated with restrictions on land use). This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of

conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this analysis looks retrospectively at costs that have been incurred since the date the species was listed as an endangered species and considers those costs that may occur in the 20 years following the designation of critical habitat.

Riverside fairy shrimp-related conservation activities associated with sections 4, 7, and 10 of the Act, including those attributable to designating critical habitat are expected to range from approximately $470 million to $770 million. These totals include $400 million in impacts estimated to have occurred since the species was listed in 1993, and $70 to $370 million in impacts that may occur in the 20 years following the proposed designation of critical habitat.

Author

The primary authors of this notice are the staff of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Authority

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

Dated: October 8, 2004.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–23225 Filed 10–18–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 69, No. 201
Tuesday, October 19, 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

October 7, 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.

Farm Service Agency

Title: Tobacco Marketing Quotas and Price Support (7 CFR Parts 711, 723, and 1464).

OMB Control Number: 0560–0058.

Summary of Collection: The Tobacco Marketing Quota Programs are regulated by the United States Department of Agriculture. Tobacco marketing quota regulations govern the establishment of farm acreage allotments and marketing quotas, the issuance of marketing cards, the identification of marketing of tobacco, the collection of penalties, eligibility for price support and requirements on tobacco dealers, warehouse operators, and manufacturers of cigarettes. The Farm Service Agency (FSA) tries to make sure that producers will receive fair prices for their tobacco. This is done by administering the tobacco program through the use of marketing quotas, which balance supply and demand for tobacco with price support. The Agricultural Adjustment Act of 1938, and the Agricultural Act of 1949, provide the statutory authority for this information collection. FSA will collect information using several forms.

Need and Use of the Information: FSA will collect tobacco reports and financial records from producers, owners of tobacco allotments and quotas and warehouse operators. The information is used by the tobacco industry to accomplish its goal and objectives. If the information is not collected, it could result in an ineffective marketing quota program and the production and marketing of large amounts of excess tobacco.

Description of Respondents: Farm; business or other for-profit; individuals or households; Federal Government.

Number of Respondents: 361,000.

Frequency of Responses: Recordkeeping; reporting: On occasion; weekly; annually.

Total Burden Hours: 1,541,420.

Animal and Plant Health Inspection Service

Title: 9 CFR 75 Communicable Diseases in Horses.

OMB Control Number: 0579–0127.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS) regulates the importation and interstate movement of animals and animal products, and conducts various other activities to protect the health of the nation's livestock and poultry. Equine Infectious Anemia (EIA) is an infectious and potentially fatal viral disease of equines. The regulations in 9 CFR 75.4 govern the interstate movement of equines that have tested positive to an official test for EIA and provide for the approval of laboratories, diagnostic facilities, and research facilities.

Need and Use of the Information: The information collected from forms, APHIS VS 10–11, Equine Infectious Anemia Laboratory Test, 10–12, Equine Infectious Anemia Supplemental Investigation and 1–27, Permit for the Movement of Restricted Animals, will be used to prevent the spread of equine infectious anemia. Without the information, it would be impossible for APHIS to effectively regulate the interstate movement of horses infected with EIA.

Description of Respondents: Individuals or households; farms; business or other for-profit; State, Local and Tribal Government.

Number of Respondents: 10,000.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 195,410.

Animal and Plant Health Inspection Service

Title: Importation of Horses, Ruminants, Swine, and Dogs; Inspection and Treatment for Screwworm.

OMB Control Number: 0579–0165.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is charged with disease prevention. The regulations under which APHIS conduct disease prevention activities are contained in Title 9, Chapter 1, Subchapter D, Parts 91 through 99. APHIS requires horses, ruminants, swine, and dogs imported into the United States from regions of the world where screwworm is known to exist to be inspected and, if necessary, treated for infestation with screwworm. Screwworm is a pest native to tropical areas of South America, the Indian subcontinent, Southeast Asia, tropical and sub-Saharan Africa, and the Arabian Peninsula that causes extensive damage to livestock and other warm-blooded animals.

Need and Use of the Information: Horses, ruminants, swine, and dogs entering the United States from regions where screwworm is known to exist must be accompanied by a certificate, signed by a full-time salaried veterinary official of the exporting country, stating that these animals have been thoroughly examined, that they have been treated with ivermectin, that any visible wounds have been treated with camaphos, and the animals appear to be free of screwworm. This is necessary to prevent the introduction of screwworm into the United States. If the information were collected less frequently or not collected at all, it would significantly cripple APHIS ability to ensure that horses, ruminants, swine, and dogs imported into the United States are not carrying screwworm. Such a development would make a screwworm incursion much more likely, with economically damaging effects on the U.S. equine, cattle, and swine industries.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 40.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 40.

Food and Nutrition Service

Title: Annual Report of State Revenue Matching.

OMB Control Number: 0584–0075.

Summary of Collection: The National School Lunch Program is mandated by the National School Lunch Act, 42 U.S.C. 1751 and the Child Nutrition Act of 1966, 42 U.S.C. 1771. The Food and Nutrition Service (FNS) administer the National School Lunch Program. Under the program, States are required to match 30 percent (or a lesser percent based on per capital income) of the Federal funds made available for the School Lunch Program. Annually, the State agencies are required to report to FNS the total funds used in order to receive Federal reimbursement for meals served to eligible participants.

Need and Use of the Information: The information collected allows FNS to monitor State compliance with the revenue matching requirement. Without the information, States may receive Federal funds, which are not warranted. Monitoring the matching of State funds is essential to preventing fraud, waste, and abuse in the National School Lunch Program.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 54.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 4,320.

Food and Nutrition Service

Title: Issuance Reconciliation Report.

OMB Control Number: 0584–0080.

Summary of Collection: The Food Stamp Act of 1977 (the Act) at Section 7(d) requires State agencies to report on Food Stamp Program issuance not less than monthly. The Food and Nutrition Service (FNS), on behalf of the Secretary of Agriculture, administers the Food Stamp Program through State agencies. These State agencies are accountable for issuance and control of food stamp coupons. Accordingly, States are liable to USDA for any financial losses involved in the acceptance, storage, and issuance of food stamp coupons. Information is required from State agencies on wrongfully issued benefits including undocumented issuances, and returned benefits, stolen and transacted accountable issuance documents, replacement benefits, and obligations from the exchange of food stamp coupons for any reason.

Need and Use of the Information: FNS provides the FNS–46 form, Issuance Reconciliation Report, for State agencies to use in reporting reconciliation results from analysis of the benefit issuances for all issuance with the record-for-issuance file. FNS uses this information to assess liability and to determine billing amounts.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 96.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 22,416.

Forest Service

Title: Forest Stewardship Program Participant Survey.

OMB Control Number: 0596–NEW.

Summary of Collection: The Cooperative Forestry Assistance Act of 1978 (Pub. L. 95–313), and the Food, Agriculture, Conservation and Trade Act of 1990 (Pub. L. 107–171), as amended authorize the Forest Service (FS) through the Forest Stewardship Program to provide technical assistance to non-industrial private forest (NIPF) owners through State Foresters. A primary focus of the Forest Stewardship Program is the development of comprehensive, multi-resource management plans that provide landowners with the information they need to manage their forests for a variety of products and services. The Forest Stewardship Program also assists State forestry agencies with a variety of programs to further support (NIPF) owner planning and management efforts including tree improvement and seedling production, and landowner education programs. FS will collect information using a telephone survey.

Need and Use of the Information: FS will use the information collected from the survey to assess the degree to which stewardship plans are affecting NIPF management, and whether program outcomes are consistent with legislative intent for the program.

Description of Respondents: Individuals or households; farms; State, Local or Tribal Government.

Number of Respondents: 1,200.

Frequency of Responses: Reporting: Other (survey will be conducted once every 5 years).

Total Burden Hours: 400.

National Agricultural Statistics Service

Title: Milk and Milk Products.

OMB Control Number: 0535–0020.

Summary of Collection: The National Agricultural Statistics Service's (NASS) primary function is to prepare and issue current official state and national estimates of crop and livestock production. Estimates of milk production and manufactured dairy products are an integral part of this program. Milk and dairy statistics are used by the U.S. Department of Agriculture (USDA) to help administer price support programs and by the dairy industry in planning, pricing, and projecting supplies of milk and milk products. The general authority for these data collection activities is granted under U.S. Code Title 7, Section 2204.

Need and Use of the Information: NASS will collect information on monthly estimates of stocks, shipments, and selling prices for such products as butter, cheese, dry whey, and nonfat dry milk. Cheddar cheese prices are collected weekly and used by USDA to assist in the determination of the fair market value of raw milk. Estimates of total milk production, number of milk cow, and milk production per cow, are used by the dairy industry in planning, pricing, and projecting supplies of milk and milk products. Collecting data less frequently would prevent USDA and the agricultural industry from keeping abreast of changes at the State and national level.

Description of Respondents: Farms; business or other for-profit.

Number of Respondents: 34,522.

Frequency of Responses: Reporting: Quarterly; weekly; monthly; annually.

Total Burden Hours: 13,086.

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 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.

Grain Inspection, Packers & Stockyards Administration

Title: ''Clear Title''—Protection for Purchasers of Farm Products.

OMB Control Number: 0580–0016.

Summary of Collection: Grain Inspection, Packers and Stockyards Administration (GIPSA) have the responsibility for the Clear Title Program (Section 1324 of the Food Security Act of 1985). The Clear Title Program was enacted to facilitate interstate commerce in farm products and protect purchasers of farm products by enabling States to establish central filing systems. The Food Security Act of 1985 permits the states to establish ''central filing systems''. These central filing systems notify buyers of farm products of any mortgages or liens on the products. There are 19 states that currently have certified central filing systems.

Need and Use of the Information: A state submits information one time to GIPSA when applying for certification. GIPSA reviews the information submitted by the states to certify that those central filing systems meet the criteria set forth in section 1324 of the Food Security Act of 1985.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 80.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–22981 Filed 10–18–04; 8:45 am]

BILLING CODE 3410–05–M; 3410–34–M; 3410–30–M; 3410–11–M; 3410–20–M; 3410–02–M; 3410–KD–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–075–1]

Monsanto Co. and KWS SAAT AG; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Sugar Beet Genetically Engineered for Tolerance to the Herbicide Glyphosate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Monsanto Company and KWS SAAT AG seeking a determination of nonregulated status for sugar beet designated as event H7–1, which has been genetically engineered for tolerance to the herbicide glyphosate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this sugar beet presents a plant pest risk. We are also making available for public comment an environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments we receive on or before December 20, 2004.

ADDRESSES: You may submit comments by any of the following methods:

Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–075–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–075–1.

E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–075–1'' on the subject line.

Agency Web site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read the petition, the environmental assessment, and any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. John Cordts, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5531. To obtain copies of the petition or the environmental assessment (EA), contact Ms. Terry Hampton at (301) 734–5715; e-mail: *Terry.A.Hampton@aphis.usda.gov.* The petition and the EA are also available on the Internet at: *http://www.aphis.usda.gov/brs/aphisdocs/03_32301p.pdf* and *http://www.aphis.usda.gov/brs/aphisdocs/03_32301p_ea.pdf.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a

determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On November 19, 2003, APHIS received a petition (APHIS Petition Number 03–323–01p) from Monsanto Company of St. Louis, MO, and KWS SAAT AG of Einbeck, Germany (Monsanto/KWS), requesting a determination of nonregulated status under 7 CFR part 340 for sugar beet (*Beta vulgaris* ssp. *vulgaris*) designated as event H7–1, which has been genetically engineered for tolerance to the herbicide glyphosate. The Monsanto/KWS petition states that the subject sugar beet should not be regulated by APHIS because it does not present a plant pest risk. As described in the petition, sugar beet event H7–1 has been genetically engineered to express a 5-enolpyruvyshikimate-3-phosphate synthase protein from *Agrobacterium* sp. strain CP4 (CP4 EPSPS), which confers tolerance to the herbicide glyphosate. Expression of the added genes is controlled in part by the 35S promoter derived from the plant pathogen figwort mosaic virus. The *Agrobacterium tumefaciens* transformation method was used to transfer the added genes into the KWS proprietary sugar beet line 3S0057.

Sugar beet event H7–1 has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. In the process of reviewing the notifications for field trials of the subject sugar beet, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical confinement or isolation, would not present a risk of plant pest introduction or dissemination.

In § 403 of the Plant Protection Act (7 U.S.C. 7701–7772), plant pest is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of a pesticide or involve a different use pattern for the pesticide, EPA must approve the new or different use. Accordingly, EPA has granted a registration for the use of glyphosate on glyphosate-tolerant sugar beet.

When the use of the pesticide on the genetically modified plant would result in an increase in the residues in a food or feed crop for which the pesticide is currently registered, or in new residues in a crop for which the pesticide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA. EPA has determined that the existing residue tolerance for glyphosate-tolerant sugar beet is sufficient to support future use of glyphosate on event H7–1.

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. Monsanto/KWS has begun consultation with FDA on the subject sugar beet event.

To provide the public with documentation of APHIS' review and analysis of the environmental impacts and plant pest risk associated with a proposed determination of nonregulated status for the Monsanto/KWS event H7–1 sugar beet, an environmental assessment (EA) has been prepared. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested persons for a period of 60 days from the date of this notice. We are also soliciting written comments from interested persons on the EA prepared to examine any environmental impacts of the proposed determination for the subject sugar beet event. The petition and the EA and any comments received are available for public review, and copies of the petition and the EA are available as indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. After reviewing and evaluating the comments on the petition and the EA and other data and information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of the Monsanto/KWS glyphosate-tolerant sugar beet event H7–1 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 1622n and 7701–7772; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 14th day of October 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E4–2710 Filed 10–18–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's

Resource Advisory Committee for Madera County will meet on Monday, October 18, 2004. The Madera Resource Advisory Committee will meet at the Forest Service Office, North Fork, CA 93643. The purpose of the meeting is: new member orientation and review FY 2004 RAC proposals.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, October 18, 2004. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Forest Service Office, 57003 Road 225, North Fork, CA 93644.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, Bass Lake Ranger District, 57003 Road 225, North Fork, CA 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) New member orientation and (2) review of FY 2004 RAC proposals.

Dated: October 11, 2004.

David W. Martin,

District Ranger, Bass Lake Ranger District.

[FR Doc. 04–23363 Filed 10–18–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Notice of Initiation of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances review.

SUMMARY: The Department of Commerce has received information sufficient to warrant initiation of a changed circumstances review of the antidumping order on brake rotors from the People's Republic of China (''PRC''). The review will be conducted to determine whether Shanxi Fengkun Foundry Ltd., Co. (''Fengkun Foundry'') is the successor-in-interest to Shanxi Fengkun Metallurgical Ltd., Co. (''Fengkun Metallurgical'').

EFFECTIVE DATE: October 19, 2004.

FOR FURTHER INFORMATION CONTACT: Steve Winkates, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1904.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 1997, the Department published in the **Federal Register** the antidumping duty order on brake rotors from the PRC (62 FR 18740). On August 27, 2004, Fengkun Foundry submitted information and documentation in support of its claim that it is the successor-in-interest to Fengkun Metallurgical and requested that the Department conduct a changed-circumstances review to determine whether Fengkun Foundry is the successor-in-interest to Fengkun Metallurgical and whether it should receive the same antidumping duty treatment as is accorded to Fengkun Metallurgical with respect to the subject merchandise.

On September 7, 2004, we informed Fengkun Foundry that in order to further consider its August 27, 2004, request for a changed circumstances review, it was required to provide a response to the Department's separate rates questionnaire for purposes of determining whether it was entitled to a separate rate (*see* September 7, 2004, memorandum from the team leader to the file, entitled ''Telephone Conversation with Counsel for Fengkun Foundry and Fengkun Metallurgical). On September 14, 2004, Fengkun Foundry provided its response to the Department's separate rates questionnaire.

On September 14, 2004, the petitioner requested that the Department publish a separate notice of initiation and refrain from simultaneously issuing a preliminary finding because (1) it claimed that the data provided in the public version of Fengkun Foundry's August 27, 2004, request did not provide the Department with sufficient information to conduct an expedited review; and (2) the petitioner was denied the ability to comment fully on Fengkun Foundry's initiation request until it is granted access to the business proprietary data contained in Fengkun Foundry's initiation request pursuant to an administrative protective order (''APO'').

Scope of Review

The products covered by this review are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans, recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those rotors which have undergone some drilling and on which the surface is not entirely smooth. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles and do not contain in the casting a logo of an original equipment manufacturer (''OEM'') which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, and Volvo). Brake rotors covered in this review are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron which contain a steel plate but otherwise meet the above criteria. Excluded from the scope of the review are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are currently classifiable under subheading 8708.39.5010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Separate Rates

In proceedings involving non-market economy (''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. Based on information contained in its September 14, 2004, submission, Fengkun Foundry is registered in the PRC as a limited liability company owned by private individuals. Thus, a separate rates analysis is necessary to determine whether Fengkun Foundry is independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China,* 61 FR 19026 (April 30, 1996)).

To establish whether a firm is sufficiently independent from

government control, and therefore entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of 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* governmental control over export activities.

1. De Jure Control

Fengkun Foundry has placed on the administrative record documentation to demonstrate absence of *de jure* governmental control, including the 1994 ''Foreign Trade Law of the People's Republic of China,'' and the ''Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations,'' promulgated on June 3, 1988.

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of stock companies including limited liability companies. *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). We have no new information in this proceeding which would cause us to reconsider this determination with regard to Fengkun Foundry.

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* and *Furfuryl Alcohol.* 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 governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental 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* and Furfuryl Alcohol.

Fengkun Foundry asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental 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, statements contained in Fengkun Foundry's September 14, 2004, submission indicate that the company does not coordinate its prices with other exporters. This information supports a initial finding that there is *de facto* absence of governmental control of the export functions of Fengkun Foundry. *See Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Administrative Review,* 62 FR 55215 (October 23, 1997). Consequently, for purposes of initiating its request for a changed circumstances review, we find that there is a sufficient basis to determine that Fengkun Foundry has met the criteria for the application of a separate rate.

Initiation of Antidumping Duty Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. In its August 27, 2004, submission, Fengkun Foundry notified the Department that it had changed its name on November 28, 2003, in order to reflect better the company's operations. In its submission, Fengkun Foundry also stated that neither its corporate structure nor its owners and shareholders has changed. The information submitted by Fengkun Foundry regarding its claim that it is the successor-in-interest to Fengkun Metallurgical shows changed circumstances sufficient to warrant a review. *See* 19 CFR 351.216(c).

In antidumping duty changed circumstances reviews involving a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (''*Brass Sheet*''). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor company if the resulting operations are essentially the same as those of the predecessor company. *See e.g., Industrial Phosphorus Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994), and *Brass Sheet*, 57 FR at 20460. Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See e.g., Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

Based on data contained in its August 27, 2004, submission and September 14, 2004, supplemental submission, Fengkun Foundry has provided sufficient evidence to warrant a review to determine if it is the successor-in-interest to Fengkun Metallurgical based on the successor-in-interest criteria enunciated in *Brass Sheet* and the Department's separate rates criteria articulated in *Sparklers* and amplified in *Silicon Carbide*. However, we consider it inappropriate to expedite this review by combining the preliminary results of review with this notice of initiation, as permitted under 19 CFR 351.221(c)(3)(ii), because Fengkun Foundry's request for this changed circumstances review was based on business proprietary information. The petitioner has, therefore, been unable to review or comment on the review request to date. Therefore, the Department is not issuing the preliminary results of its antidumping duty changed circumstances review at this time.

The Department will publish in the **Federal Register** a notice of preliminary

results of antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(4) and 19 CFR 351.221(c)(3)(I). This notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which the review is initiated.

During the course of this antidumping duty changed circumstances review, we will not change the cash deposit requirements for the merchandise subject to review. The cash deposit will only be altered, if warranted, pursuant to the final results of this review.

This notice of initiation is in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: October 12, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–23379 Filed 10–18–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–819, C–428–829, C–421–809, C–412–821]

Low Enriched Uranium From France, Germany, the Netherlands, and the United Kingdom: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Reviews.

DATES: Effective October 19, 2004.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4793.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On March 26, 2004, the Department initiated administrative reviews of the countervailing duty orders on low enriched uranium from France, Germany, the Netherlands, and the United Kingdom, covering the period of review January 1, 2003 through December 31, 2003. *See* 69 FR 15788. The preliminary results are currently due no later than October 31, 2004.

Extension of Time Limit for Preliminary Results of Reviews

We determine that these reviews are extraordinarily complicated because there are a large number of complex issues to be considered and analyzed by the Department, along with numerous programs and changes to certain programs previously found countervailable. In order to complete our analysis, we require additional and/or clarifying information. As a result, it is not practicable to complete the preliminary results of these reviews within the original time limits. Therefore, the Department is extending the time limits for completion of the preliminary results until no later than February 28, 2005. This date constitutes a 120-day extension for the administrative reviews of low enriched uranium from France, Germany, the Netherlands, and the United Kingdom.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 14, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 04–23376 Filed 10–18–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Technology Administration

National Medal of Technology Nomination Evaluation Committee; Notice of Determination for Closure of Meeting

The National Medal of Technology Nomination Evaluation Committee has scheduled a meeting for November 30, 2004.

The Committee was established to assist the Department in executing its responsibilities under 15 U.S.C. 3711. Under this provision, the Secretary of Commerce is responsible for recommending to the President prospective recipients of the National Medal of Technology. The committee's recommendations are made after reviewing all nominations received in response to a public solicitation. The Committee is chartered to have twelve members.

TIME AND PLACE: The meeting will begin at 10 a.m. and end at 4 p.m. on November 30, 2004. The meeting will be held in Room 4813 at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. For further information contact: Mildred S. Porter, Director National Medal of Technology, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Herbert C. Hoover Building, Room 4843, Washington, DC 20230, Phone: 202/482–5572.

If a member of the public would like to submit written comments concerning the committee's affairs at any time before and after the meeting, written comments should be addressed to the Director of the National Medal of Technology as indicated above.

SUPPLEMENTARY INFORMATION: The meeting will be closed to discuss the relative merits of persons and companies nominated for the Medal. Public disclosure of this information would be likely to significantly frustrate implementation of the National Medal of Technology program because premature publicity about candidates under consideration for the Medal, who may or may not ultimately receive the award, would be likely to discourage nominations for the Medal.

Accordingly, I find and determine, pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended, that the November 30, 2004, meeting may be closed to the public in accordance with section 552b (c) (9) (B) of title 5, United States Code because revealing information about Medal candidates would be likely to

significantly frustrate implementation of a proposed agency Action.

Due to closure of the meeting, copies of the minutes of the meeting will not be available, however a copy of the Notice of Determination will be available for public inspection and copying in the office of Mildred Porter, Director, National Medal of Technology, 1401 Constitution Avenue, NW., Herbert Hoover Building, Room 4843, Washington, DC 20230, Phone: 202/482–5572.

Dated: October 12, 2004.

Phillip J. Bond,

Under Secretary of Commerce for Technology.

[FR Doc. 04–23399 Filed 10–18–04; 8:45 am]

BILLING CODE 3510–18–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Purchase of Land in Hancock County, MS for a Naval Special Operations Forces Riverine and Jungle Training Range

AGENCY: Department of the Navy, DoD.

ACTION: Notice of record of decision.

SUMMARY: The Department of the Navy announces its decision to purchase approximately 5,200 acres of privately owned property in the northwestern acoustic buffer of the John C. Stennis Space Center in Hancock County, MS to establish a Naval Special Operations Forces Riverine and Jungle Training Range.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Davis, P.E. (Code ES12/RD), Southern Division Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, SC 29419–9010; phone (843) 820–5589; facsimile (843) 820–7472; or e-mail: *richard.a.davis1@navy.mil.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality regulations (40 CFR Parts 1500–1508); and Department of the Navy regulations (32 CFR 775), the Department of the Navy (Navy) announces its decision to purchase approximately 5,200 acres of privately owned property in the northwestern acoustic buffer of the John C. Stennis Space Center (SSC) in Hancock County, MS to establish a Naval Special Operations Forces (SOF) riverine and jungle training range. This decision implements Basic Training Alternative C, the preferred type and tempo of training alternative at Alternative Range Location 3, as described in the Final Environmental Impact Statement (EIS). The range will provide Naval SOF with reliable and priority access to a local training range characterized by a permanent riverine and jungle environment and where live combat exercises using Short Range Training Ammunition (SRTA) can be conducted.

Background and Issues: Naval SOF have conducted riverine and jungle training along the lower Pearl River and its tributaries within the boundaries of the SSC since the late 1990's. Current training operations consist of transitory events, including riverine patrol and interdiction, insertion and extraction in the riverine and jungle environment, inland reconnaissance and surveillance operations, craft concealment and evasion tactics and surveillance of rivers and waterways. Only blank-fire is authorized during these training activities.

The timely development of SRTA has made it possible to consider the use of SRTA-fire in specific existing training areas where all previous weapons training has been limited to blank-fire. This training improvement allows Naval SOF to understand the dynamics of firing live ammunition, such as the dynamics of randomly-fired projectiles leaving the weapon, the reaction (ricochet) of ammunition hitting objects, and a demonstration of techniques that avoid friendly-fire incidents during combat. SRTA-fire is safer for use during training and SRTA-fire is safer potentially on the environment.

The purpose of the proposed action is to significantly improve existing Naval SOF riverine and jungle training available at SSC by establishing a training range where Naval SOF have priority access to conduct live combat exercises using SRTA. The proposed range will meet the needs of Naval SOF for comprehensive, systematic, and progressive jungle and riverine training under realistic combat conditions. As a result, the readiness of Naval SOF to support national defense objectives will be increased and the potential for combat casualties reduced.

The proposed property acquisition will be completed as quickly as practicable, consistent with Congressional appropriations and final assessments and negotiations with property owners. Military use of the property will continue by permission of existing property owners, but will be expanded consistent with the Final EIS and this Record of Decision to include SRTA and increased operational tempo only after all of the necessary parcels are purchased.

Alternatives Considered: In identifying a reasonable range of alternatives that will satisfy the Navy's purpose and need, Naval Special Warfare Command (NAVSPECWARCOM) initially evaluated the feasibility of training at existing military and Federal installations within the southeast United States where NAVSPECWARCOM units had previously conducted (or had submitted a request to conduct) riverine training, as well as locations known to have specifically developed a riverine training capability, including: Fort Knox, KY; Eglin Air Force Base (AFB), FL; Camp Lejeune, NC; and SSC, MS. A screening analysis, based upon operational factors set out in the Final EIS was conducted to determine whether these potential range locations could be considered reasonable alternatives. Only the SSC area was found to be consistent with the operational screening factors and as a result, Fort Knox, Eglin AFB, and Camp Lejeune were eliminated from further evaluation.

Additional operational factors were applied to the analysis of alternative training range sites in the vicinity of SSC. These operational factors considered the extent to which realistic training scenarios could be conducted and the safety of Naval SOF personnel and the public. Of the five candidate ranges evaluated, only Alternative Range Location 3 was found to meet all identified operational factors.

In addition to the no action alternative, three operational alternatives (Basic Training Alternatives A, B, and C) were analyzed in detail, in the Final EIS. The basic training alternatives are differentiated by training type and tempo. However, all of the alternatives would involve 36 weeks per year of training on the East Pearl River, an increase of 11 weeks per year compared to existing conditions. Even with implementation of any of the proposed alternatives, Naval SOF will continue to conduct necessary live-fire training at the Army ranges at Fort Knox, KY.

Basic Training Alternative A would allow Naval SOF to conduct basic training activities within the selected range location. This would include small arms training with SRTA and the use of High Mobility Multi-purpose Wheeled Vehicles (HMMWVs).

Basic Training Alternative B builds upon the activities identified for Basic Training Alternative A and would allow possible use of the range by other SOF elements such as Army SOF Surveillance and Reconnaissance

elements. Other authorized operations on the range could involve the use of maritime unmanned aerial vehicles (UAVs), and unmanned riverine observation craft (UROCs). The UAVs would operate at treetop height above the river, and UROCs would be limited to areas located in front of the controlling watercraft. In addition, 36 helicopter insertion and extraction events would be conducted annually. Each event will consist of 10 helicopters conducting arrival, SOF insertion/deployment, SOF extraction, and departure movements. All flight plans would be filed and Notice to Airmen (NOTAM) issued for any planned helicopter operations.

Basic Training Alternative C, which has been identified as the preferred alternative by NAVSPECWARCOM, would allow Naval SOF to conduct all of the activities identified for Basic Training Alternative B and provide for conducting 24 additional helicopter insertion and extraction events, for a total of 60 annual events with ten helicopters each, participating in joint combined operations with Army SOF units.

Ensuring the safety of proposed range users and the public at large is of paramount importance to the Navy. NAVSPECWARCOM will develop a ''SRTA-Fire Range Safety Procedures Plan'' for controlling water-to-land and land-to-land SRTA-fire range operations. The plan will require that the full flight profile of all ordnance used on the range will be safely contained within the range perimeter and established safety zone. The safety plan will specify procedures for notifying the public of planned range operations that may affect access to the East Pearl River or adjacent lands, list range safety personnel and their roles and responsibilities, and identify the procedures to be followed in the event of injuries to personnel or the public.

To insure public safety during operations conducted on or adjacent to the East Pearl River, the Navy may request the U.S. Army Corps of Engineers (consistent with the conditions of 33 CFR 334, Danger Zone and Restricted Area Regulations), to establish an area to be temporarily restricted from public passage on the East Pearl River and Mikes River during SRTA-fire or other sensitive training. Actual firing time will usually be limited to increments of about 10 to 15 minutes infrequently throughout the training cycle. Public passage will be allowed to resume when it is safe to do so.

In addition to the basic training alternatives, the Final EIS evaluates the consequences of implementing the No Action Alternative. Under this alternative, privately owned property in Hancock County, MS would not be purchased nor would the Naval SOF training range be established. Naval SOF training operations conducted in the area would remain at current levels and Naval SOF boat detachments would continue to conduct only blank-fire exercises. Live-fire exercises would continue to be scheduled at the Army training range at Fort Knox, KY. The No Action Alternative is the environmentally preferred alternative because it involves no change to the physical environment. However, it would not meet the Navy's purpose and need for the proposed action.

Environmental Impacts: The Final EIS assesses the direct, indirect, and cumulative environmental effects of implementing the three basic training alternatives and the no action alternative on earth resources, air quality, noise, water resources, solid and hazardous materials, biological resources, land use and aesthetics, socioeconomics and environmental justice, public health and safety, transportation, recreation, and cultural resources. No significant environmental impacts were identified for any resource area for any alternative; however, to reduce even further the potential environmental impacts of the proposed action, the Navy will: (1) Implement a spill contingency plan to reduce or eliminate the potential for contamination of soils from accidental spills and releases from vehicles, watercraft, and aircraft; (2) implement fugitive dust controls on roadways; (3) prohibit the release of bilge water from watercraft during training exercises; (4) limit activities that generate hazardous waste, such as hull maintenance, weapons maintenance, and outboard motor maintenance and overhaul, to the boat storage and maintenance yard and the SBT–22 training facility; and (5) conduct all refueling of Naval SOF watercraft, HMMWVs, and helicopters at approved facilities outside the proposed range.

Since the U.S. Army Corps of Engineers has indicated that the majority of the proposed range area is subject to their jurisdiction under Section 404 of the Clean Water Act, some construction/maintenance activities, such as the potential road maintenance and culvert repair/replacement, could require a Department of the Army permit. The need for a permit would depend on the specific location of the proposed activities and projected impacts. For those actions that will result in impacts to any Section 404 jurisdictional areas, permitting activities will be initiated.

In addition, the Navy intends to allow hunting to occur within the proposed range. The hunting program will be consistent with state and local hunting programs, but will be developed such that it will not interfere with the military training mission of the area and will adequately provide for the safety of participants in the program.

Response to Comments Received Regarding the FEIS: The Final EIS was distributed to government agencies and the public on August 6, 2004, for a 30-day public review period. During this period only two comment letters were received, one from U.S. Environmental Protection Agency and the other from the Louisiana Department of Environmental Quality. No new substantive issues were raised in the comments received. All of the issues raised in the comment letters were thoroughly discussed in the Final EIS.

Conclusions: After carefully considering the purpose and need for the proposed action, the analyses contained in the Final EIS, and the comments received on the Draft and Final EIS from Federal, state, and local agencies, non-governmental organizations, and individual members of the public, I have determined that purchase of the proposed acreage at SSC (Alternative Range Location 3) and establishment of a Naval SOF riverine and jungle training range to conduct training, as described in Basic Training Alternative C will best meet the needs of Naval SOF to train under realistic combat conditions, thereby increasing their readiness to support national defense objectives and ultimately reducing combat casualties.

Dated: October 6, 2004.

Wayne Arny,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

[FR Doc. 04–23334 Filed 10–18–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 18, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Student Aid Internet Gateway (SAIG) Enrollment Document.

Frequency: On Occasion.

Affected Public: Not-for-profit institutions; Businesses or other for-profit; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses—9,332.

Burden Hours—6,221.

Abstract: Enrollment in SAIG allows eligible entities to exchange Title IV information electronically with the Department of Education. Users are able to receive, transmit, view and update student financial aid data via SAIG. Eligible respondents include postsecondary schools that participate in Federal student financial aid programs, financial aid servicers, State and guaranty agencies, lenders, and need analysis servicers.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2553. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E4–2707 Filed 10–18–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by November 1, 2004. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before December 20, 2004.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden.

ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: October 13, 2004.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Section 704 Annual Performance Report (Parts I and II).

Abstract: Section 706(d), 721(b)(3), and 725(c) of the Rehabilitation Act of 1973, as amended (Act) and corresponding program regulations in 34 CFR parts 364, 365, and 366 require centers for independent living, Statewide Independent Living Councils (SILCs) and Designated State Units (DSUs) supported under Parts B and C of Chapter 1 of Title VII of the Act to submit to the Secretary of Education (Secretary) annual performance information and identify training and technical assistance needs.

Additional Information: The Rehabilitation Services Administration (RSA) is in the process of modifying Part I and Part II of the 704 report to address the concerns identified by the community as well as those noted in the RSA-approved ''Cherry Engineering Support Services Incorporated (CESSI) Report on Independent Living''.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses—319.

Burden Hours—11,165.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2625. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E4–2715 Filed 10–18–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by November 1, 2004. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before December 20, 2004.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden.

ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: October 13, 2004.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Independent Living Services for Older Individuals Who Are Blind.

Abstract: The new form will be used to evaluate and monitor Independent Living Services for Older Individuals Who Are Blind related to: (a) The type of services provided and the number of persons receiving each type of service, (b) the amounts and percentage of funds reported on each type of service provided.

Additional Information: Section 752(i)(2)(A) of the Rehabilitation Act Amendments of 1992 requires each grantee under this program to submit an annual report to the Commissioner of the Rehabilitation Services Administration (RSA) on essential demographic, service and outcome information. It provides RSA with a uniform and efficient method of monitoring the program for compliance with statutory and regulatory requirements and to determine substantial progress required for the funding of all non-competing continuation discretionary grants.

Frequency: Annually.

Affected Public: Individuals or household; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses—55.

Burden Hours—440.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2626. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E4–2716 Filed 10–18–04; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting agenda.

DATE AND TIME: Tuesday, October 26, 2004, 10 a.m.–12 noon.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 1100, Washington, DC 20005, (Metro Stop: Metro Center).

AGENDA: The Commission will receive presentations from other Federal agencies regarding Election Day procedures. The Commission will also review the following: State preparations for the November 2nd election; the status of State administration of provisional voting; information gathered from on site visits to States and meetings with State election officials since January; tools in place for communicating with election officials to monitor Election Day developments; Election Day schedules of Commissioners. The Commission will also receive updates on the following: November Election Day Research Project; Title II Requirements Payments, HAVA College Program; EAC Poll Worker Initiative; EAC management topics.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone: (202) 566–3100.

Ray Martinez III,

Commissioner, U.S. Election Assistance Commission.

[FR Doc. 04–23502 Filed 10–15–04; 3:33 pm]

BILLING CODE 6820–YN–M

DEPARTMENT OF ENERGY

[Docket No. EA–275–A]

Applications to Export Electric Energy; NorthPoint Energy Solutions Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: NorthPoint Energy Solutions Inc. (NorthPoint) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before November 18, 2004.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a (e)).

On April 8, 2003, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–275 authorizing NorthPoint to transmit electric energy from the United States to Canada as a power marketer using existing international electric transmission facilities. That two-year authorization will expire on April 8, 2005.

On September 30, 2004, the FE received an application from NorthPoint to renew its authorization to transmit electric energy from the United States to Canada for a term of five years. NorthPoint, a Canadian corporation based in Saskatchewan, Canada, is a power marketer that does not own or control any electric generation or transmission facilities nor does it have any franchised service territory in the United States. NorthPoint exports electrical energy acquired from United States generating sources to customers in Canada.

In FE Docket No. EA–275–A, NorthPoint proposes to export electric energy to Canada and to arrange for the delivery of those exports over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, Vermont Electric Company, and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by NorthPoint, as more fully described in the applications, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with sections 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the dates listed above.

Comments on the NorthPoint applications to export electric energy to Mexico and/or Canada should be clearly marked with Docket EA–275–A. Additional copies are to be filed directly with Debra L. McAllister, Senior Legal Counsel, NorthPoint Energy Solutions Inc., 2025 Victoria Avenue, Regina, Saskatchewan, Canada S4P 0S1 and Stan Berman, Todd Glass, Heller Ehrman White & McAulilffe LLP, 701 Fifth Avenue, Seattle, WA 98104.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov.* Upon reaching the Fossil Energy Home page, select ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on October 13, 2004.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Fossil Energy.

[FR Doc. 04–23354 Filed 10–18–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–296]

Application To Export Electric Energy; Rainbow Energy Marketing Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Rainbow Energy Marketing Corporation (Rainbow) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before November 3, 2004.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Systems (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On September 27, 2004, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Rainbow to transmit electric energy from the United States to Canada. Rainbow is a North Dakota corporation with its principal place of business located in Bismark, North Dakota. Rainbow is a privately owned corporation and is a subsidiary of United Energy Corporation. Rainbow does not own or control any transmission or distribution assets, nor does it have a franchised service area. The electric energy which Rainbow proposes to export to Canada would be purchased from electric utilities and Federal power marketing agencies within the U.S.

On October 13, 2004, Rainbow supplemented its application with a letter requesting that DOE expedite the processing of this application based on Rainbow's assertion that it currently has pending transactions that cannot be executed until prior to receipt of an electricity export authorization. Accordingly, DOE has shortened the public comment period to 15 days.

Rainbow proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, Vermont Electric Company, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Rainbow, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with sections 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Rainbow application to export electric energy to Canada should be clearly marked with Docket EA–296. Additional copies are to be filed directly with Joseph M. Wolfe, Rainbow Energy Marketing Corporation, Kirkwood Office Tower, 919 South 7th Street, Suite 405, Bismarck, ND 58504.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.de.gov.* Upon reaching the Fossil Energy Home page, select ''Electricity Regulation,'' and then ''Pending Procedures'' from the options menus.

Issued in Washington, DC, on October 13, 2004.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Fossil Energy.

[FR Doc. 04–23355 Filed 10–18–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7828–8]

Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and the Stratospheric Ozone Protection Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS); the National Emission Standards for Hazardous Air Pollutants (NESHAP and MACT); and the Stratospheric Ozone Protection Program.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the Office of Enforcement and Compliance Assurance (OECA) website at: *http://www.epa.gov/compliance/assistance/applicability.* The document may be located by date, author, subpart, or subject search. For questions about the ADI or this notice, contact Maria Malave at EPA by phone at: (202) 564–7027, or by e-mail at: *malave.maria@epa.gov.* For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background: The General Provisions to the NSPS in 40 CFR part 60 and the NESHAP in 40 CFR part 61 provide that

a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are broadly termed applicability determinations. See 40 CFR 60.5 and 61.06. Although the part 63 NESHAP, refer to as the Maximum Achievable Control Technology (MACT) standard, and section 111(d) of the Clean Air Act regulations contain no specific regulatory provision that sources may request applicability determinations, EPA does respond to written inquiries regarding applicability for the part 63 and section 111(d) programs. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping which is different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are broadly termed alternative monitoring decisions. Furthermore, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping or reporting requirements contained in the regulation. EPA's written responses to these inquiries are broadly termed regulatory interpretations.

EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the Applicability Determination Index (ADI) on a quarterly basis. In addition, the ADI contains EPA-issued responses to requests pursuant to the stratospheric ozone regulations, contained in 40 CFR part 82. The ADI is an electronic index on the Internet with over one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS and NESHAP. The letters and memoranda may be searched by date, office of issuance, subpart, citation, control number or by string word searches.

Today's notice comprises a summary of 32 such documents added to the ADI on September 17, 2004. The subject, author, recipient, date and header of each letter and memorandum are listed in this notice, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI through the OECA Web site at: *http://www.epa.gov/compliance/assistance/applicability.*

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on September 17, 2004; the applicable category; the subpart(s) of 40 CFR part 60, 61, or 63 (as applicable) covered by the document; and the title of the document, which provides a brief description of the subject matter. We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents.

Control number	Category	Subparts	Title
M040016	MACT	EEEE, FFFF	Application of Multiple MACT Standards.
M040025	MACT	SSSS	Streamlining NSPS Subpart TT/NESHAP Subpart SSSS.
M040017	MACT	PPPP	Methyl Ethyl Ketone (MEK) Used in Chemical Welding Process.
M040018	MACT	GGG	Alternative Monitoring Parameters for Carbon Adsorbers.
M040019	MACT	EEE	Waivers & Alternative Monitoring for Incinerator/Scrubber.
M040020	MACT	EEE	Waivers & Alternative Monitoring for Condenser/Absorber & Scrubber.
M040021	MACT	EEE	Waivers & Alternative Monitoring for Condenser/Absorber & Scrubber.
M040022	MACT	EEE	Waivers & Alternative Monitoring for Condenser/Absorber & Scrubber.
M040023	MACT	GG	Automated Dynamic Pressure Monitoring for Inorganic HAPs.
M040026	MACT	MMMM, XXXX	Rubber Tire Manufacturing.
M040024	MACT	S	Hot Condensing Scrubber/Tank and Hotwell Control Devices.
M040027	MACT	AAAA	Definition of Landfill Gas Treatment.
	ACT	AAAA	Definition of Landfill Gas Treatment.
Z040002	NESHAP	C	Incineration of Beryllium-Containing Waste.
0400019	NSPS	TT	Streamlining NSPS Subpart TT/NESHAP Subpart SSSS.
0400020	NSPS	Dc	Monthly Monitoring of Fuel Usage.
0400021	NSPS	GG	Approval of New Test Port Location.
0400022	NSPS	Dc, Da, D	Classification of Petroleum-Derived Fuel.
0400023	NSPS	CCCC	Alternative Operating Parameter Monitoring.
0400024	NSPS	Dc	Applicability to Fuel Heaters.
0400025	NSPS	BB	Alternative Monitoring for Scrubber.
0400026	NSPS	NNN	Alternative Monitoring.
0400027	NSPS	Dc, Db	Carbon Burn-Out Process.
0400028	NSPS	WWW	Definition of Landfill Gas Treatment.
0400029	NSPS	Kb, VV, III, NNN, RRR	Ethanol Manufacturing Plant.
0400030	NSPS	QQQ	Junction Box Tight Seal & Infrequently Used Drain.
0400031	NSPS	QQQ	Junction Box Tight Seal & Infrequently Used Drain.
0400032	NSPS	WWW	Definition of Landfill Gas Treatment.
0400033	NSPS	WWW	Changes In Monitoring and Recordkeeping Procedures.
0400034	NSPS	GG	Custom Fuel Sulfur Monitoring Schedule.

Control number	Category	Subparts	Title
0400035	NSPS	GG	Custom Fuel Sulfur Monitoring Schedule.
400036	NSPS	CCCC	Air Curtain Incinerator for Clearing Dead Trees.

Abstracts

Abstract for [M040016]

Q: May the Ashland Specialty Chemical Company facility located at Neville Island in Pittsburgh, subject to the Hazardous Organic NESHAP of 40 CFR part 63 and potentially subject to future Miscellaneous Organic NESHAP (MON) and Organic Liquids Distribution NESHAP (OLD) standards, avoid being subject to the MON and OLD standards by taking enforceable limits and becoming a minor source?

A: Per the EPA guidance memorandum entitled, ''Potential to Emit for MACT Standards—Guidance on Timing Issues,'' dated May 16, 1995, a facility that is subject to a MACT standard is not necessarily a major source for future MACT standards. For example, if after compliance with a MACT standard, a source's potential to emit is less than the 10/25 tons per year applicability level, EPA will consider the facility to be an area source for a subsequent standard.'' Consistent with this guidance, EPA would consider the Company to be an area source for purposes of determining the applicability of the MON and OLD if the Company takes an enforceable limit which makes the facility a minor source of HAPs prior to the compliance dates of the MON and OLD standards.

Abstract for [M040017]

Q: Methyl ethyl ketone is used to soften plastic parts at the Sonoco Products plant in Union, South Carolina, so that they can be joined or welded together in a process that does not leave any nonvolatile residual material on the joined parts. Is this process subject to 40 CFR part 63, subpart PPPP?

A: No. Applicability of MACT subpart PPPP depends on the mass of coating solids remaining on the joined pieces to determine an emission limit. Since this process does not involve any mass of coating solids, the provisions of MACT subpart PPPP do not apply to the operation.

Abstract for [M040018]

Q1: May the Abbott Laboratories facility in North Chicago, Illinois, that is subject to the pharmaceutical MACT standard of 40 CFR part 63, subpart GGG, establish an alternative monitoring parameter for regenerating its carbon adsorption beds that is based on load?

A1: No. EPA will not approve an alternative monitoring parameter that does not also recognize the critical factor of time and include minimum regeneration frequencies.

Q2: May the Abbott facility establish 212 degrees F as a minimum temperature to which the bed is heated during regeneration?

A2: Yes. Based on the manufacturer's recommendation and temperature data collected during the performance test, the facility may establish 212 degrees F as a minimum temperature to which the bed is heated during regeneration.

Q3: May the Abbott facility establish 170 degrees F as the maximum temperature to which the bed is cooled, measured within 15 minutes of completing cooling?

A3: Yes. Based on the manufacturer's recommendation and temperature data collected during the performance test, the facility may establish 170 degrees F as the maximum temperature to which the bed is cooled, measured within 15 minutes of completing cooling.

Q4: May the Abbott facility use an alternative minimum regeneration stream flow rate of 4,877 lb/hr to maintain a methylene chloride emissions control efficiency of 98 percent?

A4: No. The facility may not use an alternative minimum regeneration stream flow rate of 4,877 lb/hr to maintain a methylene chloride emissions control efficiency of 98 percent. The flow rate during the performance test was 5,419 lb/hr. A flow rate of 4.877 lb/hr is based on the facility's assumption that 90percent of the performance test rate is appropriate to sufficiently maintain a 98+ percent methylene chloride emissions control efficiency. EPA can find no support for this assumption.

Abstract for [M040019]

Q1: Will EPA waive the 40 CFR part 63, subpart EEE requirement to establish an Operating Parameter Limit (OPL) on the maximum solids content of the scrubber solution, or the minimum blowdown rate and either the minimum scrubber tank volume or level for the fluid bed incinerator at the BP refinery in Whiting, Indiana?

A1: Yes. Provided the Title 5 permit is rewritten to include an operating condition requiring the use of once through scrubber water, EPA will waive the requirement.

Q2: Will EPA waive the requirement to establish an OPL on the minimum scrubber water pH?

A2: Yes. Provided that the facility includes a water pH of 6.5—9.0 and a requirement to use once through water in its Title 5 permit, and provided that the facility's Title 5 permit is rewritten to include an operating condition requiring the use of once through scrubber water, EPA will waive the requirement.

Q3: Will EPA waive the requirement to analyze the No. 2 fuel oil for regulated constituents?

A3: Yes. EPA will waive the requirement based upon the historical data provided by the facility. However, the facility must continue to analyze the No. 2 fuel oil for principal organic hazardous constituents (POHCS).

Q4: Will EPA approve alternative monitoring for the sludge waste feed rate if the facility continuously monitors the feed rate to the presses and monitors on a monthly basis the ash percentage after the presses?

A4: Yes Provided that the facility also measures the density of the solids before the press on a monthly basis, EPA will approve the requested alternative monitoring for the sludge waste feed rate.

Abstract for [M040020]

Q1: Will EPA waive the 40 CFR part 63, subpart EEE requirement to establish an operating parameter limit (OPL) on the maximum solids content of the scrubber solution, or the minimum blowdown rate and either the minimum scrubber tank volume or level at the condenser/absorber for the T149 Trane incinerator at the Eli Lilly, Tippecanoe Laboratories facility in Shadeland, Indiana?

A1: Yes. Because the maximum solids content of the scrubber solution, or the minimum blowdown rate and either the minimum scrubber tank volume or liquid level are being measured at the Hydro-Sonic scrubber, this OPL does not need to be measured at the condenser/absorber.

Q2: Will EPA waive the requirement to establish an OPL on the minimum pressure drop across the condenser/ absorber?

A2: No. Because some hydrochloric acid (HCl) removal occurs at the condenser/ absorber through the liquid

to gas interface, EPA will not waive the requirement to establish an OPL on the minimum pressure drop.

Q3: Will EPA waive the requirement to establish an OPL on the minimum liquid feed pressure at the condenser/absorber?

A3: No. Because some HCl removal occurs at the condenser/absorber through the liquid to gas interface, it is appropriate to establish an OPL on the minimum liquid feed pressure to ensure that the feed is at least the amount present during the performance test.

Q4: Will EPA waive the requirement to establish an OPL on the minimum scrubber water pH at the condenser/absorber?

A4: No. The facility adds a mixture of caustic and make-up water to the air pollution control system (APCS) at the condenser/absorber, not at the Hydro-Sonic scrubber. Thus, it is appropriate to establish an OPL on the pH of the caustic/water solution as it enters the condenser/absorber to ensure that the pH of this solution is at least that of the solution used during the performance test.

Q5: Will EPA waive the requirement to establish an OPL on the minimum liquid to gas ratio or the minimum liquid and maximum flue gas flow rates for the condenser/absorber?

A5: No. The justification provided in your request that ''the condenser/absorber is not the HCl/Cl2 control device'' is insufficient. However, EPA approves the facility's subsequent request to set the minimum liquid feed rate at the level recommended by the manufacturer or lower, if demonstrated during the comprehensive performance test (CPT).

Q6: Will EPA approve an alternative OPL for the minimum pressure drop across the Hydro-Sonic scrubber, based on an equivalent differential pressure which would be calculated based on an equation developed by the manufacturer of the Hydro-Sonic scrubber?

A6: Conditional. The facility may use the model in its CPT plan if it maintains a minimum equivalent differential pressure of 25 inches. If Lilly still wants to develop a site-specific model, it must submit all supporting data to U.S. EPA for review and approval.

Abstract for [M040021]

Q1: Will EPA waive the 40 CFR part 63, subpart EEE requirement to establish an OPL on the minimum pressure drop across the condenser/absorber for the T03 and T04 Trane incinerators at the Eli Lilly, Tippecanoe Laboratories facility in Clinton, Indiana?

A1: No. Because some hydrochloric acid (HCl) removal occurs at the condenser/absorber through the liquid to gas interface, EPA will not waive the requirement to establish an OPL on the minimum pressure drop.

Q2: Will EPA waive the requirement to establish an OPL on the minimum liquid feed pressure at the condenser/absorber?

A2: No. Because some HCl removal occurs at the condenser/absorber through the liquid to gas interface, it is appropriate to establish an OPL on the minimum liquid feed pressure to ensure that the feed is at least the amount present during the performance test.

Q3: Will EPA waive the requirement to establish an OPL on the minimum liquid to gas ratio or the minimum liquid and maximum flue gas flow rates for the condenser/absorber?

A3: No. The justification for the source's original request that the condenser/absorber is not the HCl/Cl2 control device is insufficient. However, EPA approves the facility's alternate request made in a follow up conversation that the minimum liquid feed rate be set at the level recommended by the manufacturer.

Q4: Will EPA waive the requirement to establish an OPL on the minimum scrubber water pH at the condenser/absorber?

A4: No. The facility adds a mixture of caustic and make-up water to the air pollution control system (APCS) at the condenser/absorber. Thus, it is appropriate to establish an OPL on the pH of the caustic/water solution as it enters the condenser/absorber to ensure that the pH of this solution is at least that of the solution used during the performance test.

Q5: Will EPA approve an alternative OPL for the minimum pressure drop across the Hydro-Sonic scrubber, based on an equivalent differential pressure which would be calculated based on an equation developed by the manufacturer of the Hydro-Sonic scrubber?

A5: Conditional. The facility may use the model in its CPT plan if it maintains a minimum equivalent differential pressure of 25 inches. If Lilly still wants to develop a site-specific model, it must submit all supporting data and involve U.S. EPA in the development of the model.

Q6: Will EPA approve annual calibrations as an alternative to the requirement to conduct daily zero and high-level calibration drifts on several instruments?

A6: Eli Lilly withdrew this request.

Q7: Will the U.S. EPA waive the requirement for immediate repair of a CMS found at 40 CFR 63.8(c)(1)(I)?

A7: Eli Lilly withdrew this request.

Abstract for [M040022]

Q1: Will EPA waive the 40 CFR part 63, subpart EEE requirement to establish an operating parameter limit (OPL) on the minimum liquid feed pressure at the condenser/absorber for the T49 Trane incinerator at the Eli Lilly Tippecanoe Laboratories facility in Shadeland, Indiana?

A1: Yes. Because the condenser/absorber uses a flow distributor plate rather than spray nozzles, EPA waives the requirement to establish an operating parameter limit (OPL) on the minimum liquid feed pressure.

Q2: Will EPA waive the requirement to establish an OPL on the maximum solids content of the scrubber solution, or the minimum blowdown rate and either the minimum scrubber tank volume or level at the condenser/absorber?

A2: No. The facility must establish an OPL somewhere in the air pollution control system (APCS), since it recycles some water. The most appropriate location for this OPL is at the condenser/absorber.

Q3: Will EPA waive the requirement to establish an OPL on the minimum scrubber water pH at the condenser/absorber?

A3: No. The facility adds a mixture of caustic and make-up water to the APCS at the condenser/absorber, not at the Hydro-Sonic scrubber. Thus, it is appropriate to establish an OPL on the pH of the caustic/water solution as it enters the condenser/absorber to ensure that the pH of this solution is at least that of the solution used during the performance test.

Q4: Will EPA approve an alternative OPL for the minimum pressure drop across the Hydro-Sonic scrubber, based on an equivalent differential pressure which would be calculated based on an equation developed by the manufacturer of the Hydro-Sonic scrubber?

A4: Conditional. The facility may use the model in its comprehensive performance test plan if it maintains a minimum equivalent differential pressure of 25 inches. If Lilly still wants to develop a site-specific model, it must submit all supporting data and involve EPA in the development of the model.

Q5: Will EPA waive the requirement to establish an OPL for the minimum scrubber water pH at the Hydro-Sonic scrubber?

A5: Yes. Because the facility adds a mixture of caustic and make-up water to the APCS at the condenser/absorber, not at the Hydro-Sonic scrubber.

Q6: Will EPA approve annual calibrations as an alternative to the requirement to conduct daily zero and

high-level calibration drifts on several instruments?

A6: Eli Lilly withdrew this request.

Q7: Will the U.S. EPA waive the requirement for immediate repair of a CMS found at 40 CFR 63.8(c)(1)(I)?

A7: Eli Lilly withdrew this request. Recent revisions of the General Provisions changed these requirements in a way that is suitable to Eli Lilly.

Abstract for [M040023]

Q: Will EPA approve an automated dynamic pressure monitoring system for a 3-stage high efficiency particulate air (HEPA) filter, under 40 CFR part 63, subpart GG, standards for Aerospace Manufacturing and Rework Facilities, for the Honeywell plant in South Bend, Indiana?

A: Yes. EPA approves the automated dynamic pressure monitoring system for a 3-stage HEPA filter. The system eliminates the need for manual observations, recordkeeping, and equipment adjustments. To maintain the manufacturer's recommended pressure drop, the automated design includes velocity pressure sensors and a motor-controlled lineal air flow rate which ensures that the pressure drop is not exceeded.

Abstract for [M040024]

Q: Are the hot condensing scrubber/hot condensing tank and the hotwell at the Wausau-Mosinee Paper magnesium-based sulfite pulp mill in Brokaw, Wisconsin, air pollution control devices covered by the pulp and paper Maximum Achievable Control Technology (MACT) standard, 40 CFR part 63, subpart S?

A: Yes, they are considered control devices. Although EPA did not name the hazardous air pollutant (HAP) control systems needed to meet specific emission reduction for a sulfite mill, any technology that reduces HAP emissions is considered a MACT control option regardless of why the technology was installed. The hot condensing scrubber and its auxiliary tank and the hotwell all reduce emissions of methanol, a HAP. Thus, the vents, wastewater and condensate streams from these control devices must be controlled per 40 CFR 63.444(c)(2).

Abstract for [M040025] and [0400019]

Q: If a facility is subject to the metal coil surface coating requirements of both 40 CFR part 63, subpart SSSS and 40 CFR part 60, subpart TT, and uses thermal incinerators or catalytic oxidizers to comply, would EPA find streamlining of these two monitoring requirements acceptable?

A: Yes. EPA concludes that for facilities using thermal incinerators, the MACT subpart SSSS effluent gas monitoring requirements may be streamlined with the similar subpart TT monitoring requirements. Also, EPA determines that for facilities using catalytic oxidizers, either of the MACT subpart SSSS monitoring requirements may be streamlined with the NSPS subpart TT monitoring requirements.

Abstract for [M040026]

Q1: Does Trelleborg Wheel Systems operate a ''rubber processing affected source'' as described in the Rubber Tire Manufacturing MACT standard at 40 CFR 63.5982(b)(4)?

A1: Yes. Trelleborg mixes the raw materials for solid rubber tires in a Banbury mixer to produce mixed rubber compound. EPA concludes that this constitutes a rubber processing affected source.

Q2: Are the adhesives that Trelleborg uses to hold layers of mixed rubber compound to a steel rim ''cements and solvents'' as defined in the Rubber Tire Manufacturing MACT standard at 40 CFR 63.6015 or a ''rubber to metal coating'' as defined in the Miscellaneous Metal Parts Coating NESHAP at 40 CFR 63.3981?

A2: Even though the adhesives meet the definition of ''cements and solvents,'' EPA concludes that the adhesives are more correctly designated as a rubber to metal coating because the definition of rubber to metal coating explicitly describes Trelleborg's use of the adhesives.

Q3: Does Trelleborg operate a ''tire production affected source'' as described in the Rubber Tire Manufacturing MACT standard at 40 CFR 63.5982(b)(1)?

A3: One defining characteristic of ''cements and solvents'' is their use as process aids in the production of rubber tires. EPA concludes that the organic compounds in Trelleborg's mixed rubber compound are integral components of the product, and do not merely facilitate or assist the production of rubber tires. Therefore, EPA concludes that Trelleborg's adhesive coating lines and tire production operations do not meet the definition of a tire production affected source.

Abstract for [M040027], [M040028], [0400028] and [0400032]

Q1: What is the definition of ''treatment'' under NSPS subpart WWW at 40 CFR 60.752(b)(2)(iii)(C)?

A1: EPA has determined that compression, de-watering, and filtering the landfill gas down to at least 10 microns is considered ''treatment'' under NSPS Subpart WWW, 40 CFR 60.752(b)(2)(iii)(C). EPA made the same determination under ADI Control Numbers 0200019, 0200028, and 0300121, available on the ADI website.

Q2: Do the municipal solid waste landfill regulations apply to the gas once treatment has occurred?

A2: No. Once landfill gas has been treated, NSPS subpart WWW no longer applies to the treated gas. However, all gas before treatment, and respective control equipment, would be subject.

Abstract for [Z040002]

Q: The Duratek Services facility in Oak Ridge, Tennessee, proposes to sort and repackage wastes for off-site disposal and will incinerate secondary wastes which are incidental to the primary sorting operation. The wastes which are sorted and repackaged will include some beryllium machine shop waste. Will the facility be subject to the NESHAP subpart C requirements?

A: If any beryllium-containing waste will be incinerated, the incinerator will be subject to NESHAP subpart C. If the company can confirm that emissions from incinerating the waste will be in compliance with the standard, a waiver from emission testing requirements may be appropriate.

Abstract for [0400020]

Q: Will EPA approve under 40 CFR part 60, subpart Dc, the use of monthly fuel usage monitoring for the new package boiler at the ISG facility in Steelton, Pennsylvania?

A: Yes. EPA will approve the use of monthly fuel usage monitoring and recording rather than daily monitoring as required by subpart Dc due to the fact that the new package boiler is only permitted to combust pipeline-quality natural gas as fuel.

Abstract for [0400021]

Q: Will EPA approve under 40 CFR part 60, subpart GG, new test port locations for conducting the oxygen traverse and gas sampling for the Old Dominion Electric Cooperative Marsh Run facility in Virginia?

A: Yes. EPA will approve the new test port location and reduced amount of oxygen traverse data in the exhaust stack from the turbine, provided that the oxygen range for the 8 traverse points does not exceed 0.5 percent oxygen and the average oxygen content is greater than 15 percent.

Abstract for [0400022]

Q1: Will the combustion of a fuel produced during the polymerization of distillates from petroleum refining operations at the Resinall facility in

Severn, North Carolina be regulated under the NSPS subpart Dc?

A1: Yes. Because the fuel is derived from petroleum and is described as having properties similar to those of lightweight fuel oils, it is considered equivalent to oil under NSPS subpart Dc. Under NSPS subpart Dc, the same SO2 standard will apply whether the fuel is classified as No. 2 fuel oil or residual oil. If the fuel does not meet the No. 2 fuel oil criteria, it would be classified as residual oil.

Q2: Will this fuel be considered a ''fossil fuel'' as defined in NSPS subparts D and Da?

A2: Yes. Based on the description provided by the company, the fuel appears to meet the definition of fossil fuel provided in NSPS Subparts D and Da in that it is a liquid fuel derived from petroleum for the purpose of creating useful heat.

Abstract for [0400023]

Q: Grupo Antolin Kentucky, in Lexington, Kentucky, proposes to maintain baghouse inlet temperature and pressure drop to ensure continuous compliance with lead emissions standards. Are these proposed operating parameters sufficient to ensure compliance with the lead standards in NSPS subpart CCCC?

A: Yes. Maintaining temperature and pressure drop in accordance with the conditions mentioned in this letter will ensure reasonable assurance of compliance with NSPS subpart CCCC.

Abstract for [0400024]

Q: Natural gas-fired fuel heaters at a Gulfstream Pipeline facility in Florida will heat glycol which will be used to heat natural gas prior to its use in combustion turbines as fuel. Will the heaters be subject to NSPS subpart Dc?

A: Yes. Because the fuel heaters will heat a heat transfer medium (glycol), they will be steam generating units subject to NSPS subpart Dc.

Abstract for [0400025]

Q: Will EPA allow continuous monitoring of fan amps and the total scrubbing liquid flow rate as an alternative to the required monitoring parameters under NSPS subpart BB, for a smelt dissolving tank dynamic scrubber at a MeadWestvaco Coated Board facility in Alabama?

A: Yes. Because the dynamic scrubber operates near atmospheric pressure, the proposed monitoring is an acceptable alternative to the NSPS subpart BB requirement to monitor the pressure loss of the gas stream and the scrubbing liquid supply pressure.

Abstract for [0400026]

Q: Are proposed alternative monitoring procedures at an Eastman Chemical facility in Tennessee, regarding flow indicator location, acceptable for two process units which may comply with the NSPS subpart NNN by using either a flare or boilers?

A: Yes. The proposed alternatives meet the intent of NSPS subpart NNN by ensuring that affected vent streams are directed to the combustion device used to control VOC emissions.

Abstract for [0400027]

Q: A proposed carbon burn-out unit with a heat input of 95.57 mmBtu/hr will be used to burn fly ash and heat feedwater going to electric utility steam generating units at a Progress Energy facility in North Carolina. Will the carbon burn-out unit be a steam generating unit subject to the 40 CFR part 60, subpart Dc?

A: Yes. The carbon burn-out unit will be an affected facility subject to NSPS subpart Dc and will be subject to the recordkeeping requirements of that standard. No NSPS subpart Dc emission limits will be applicable to the combustion of fly ash since fly ash is not considered ''coal'' under this rule. However, if the heat input exceeds 100 mmBtu/hr, the carbon burn-out unit will be subject to NSPS subpart Db and will be subject to the emission limits for ''coal'' as defined in NSPS subpart Db because the definition includes fly ash.

Abstract for [0400029]

Q: Do the NSPS subparts Kb, VV, III, NNN, and RRR apply to any of the Liquid Resources of Ohio facilities in Medina, Ohio, a plant that manufactures ethanol from waste beverages and distills ethanol from waste alcohol containing beverages?

A: NSPS subparts Kb and VV apply to all affected operations at the plant. NSPS subpart NNN applies only to the distillation of waste alcohol containing beverages. NSPS subparts III and RRR do not apply to any facilities at this plant.

Abstract for [0400030]

Q1: Are covers on junction boxes at the Marathon Ashland Petroleum facility in St. Paul Park, Minnesota, required to be equipped with a gasket or other type of seal in order to satisfy the ''tight seal'' requirements for junction box covers in NSPS subpart QQQ?

A1: Yes. The tight seal requirements in 40 CFR 60.692–2(b)(2) implicitly require that all junction box covers be equipped with a gasket and clamp. [This determination has been superseded by determination number 0400031, summarized below.]

Q2: May infrequently used drains be equipped with a tightly sealed cap or plug in lieu of the water seal controls required by 40 CFR 60.692–2(a)(1)?

A2: Yes. Tightly sealed caps or plugs may be used on drains that are not used more than twice in a two month time frame. However, all other drains must be equipped with water seals.

Q3: Do hatches and valves satisfy the ''tightly sealed cap or plug'' requirement under 40 CFR 60.692–2(a)(4)?

A3: Yes. Any type of cap or plug which provides a gas tight barrier to the atmosphere meets the requirements of 40 CFR 60.692–2(a)(4).

Abstract for [0400031]

Q1: In a December 4, 2003 letter, EPA determined that a gasket is required to satisfy the ''tight seal'' requirements for junction box covers under 40 CFR part 60, subpart QQQ. Would another type of seal which prevents leaks to the atmosphere, such as external caulking, satisfy these requirements?

A1: Yes. Any type of seal that prevents detectable leaks around the edges is sufficient to comply with the ''tight seal'' requirements in 40 CFR 60.692–2(b)(2).

Q2: Are drains which are not open to the atmosphere more than 24 hours per month used infrequently enough to allow the usage of a tightly sealed cap or plug in lieu of the water seal requirements in 40 CFR 60.692–2(a)(1)?

A2: Yes. Drains open less than 24 hours per month are used infrequently enough to forgo the water seal requirements.

Abstract for [0400033]

Q1: Will EPA grant the request of the Central Disposal Systems facility in Lake Mills, Iowa, for flexibility under NSPS, subpart WWW, to modify the design of its collection and control system?

A1: The facility may make changes to the design of the collection and control system by submitting a revised collection and control system design plan to and receiving approval from the Iowa Department of Natural Resources (IDNR). The facility must then follow the revised design plan if approved by IDNR.

Q2: Will EPA allow use of a temporary collection system, leachate collection system, and leachate recirculation system until final grades are achieved?

A2: The facility may use these types of collection systems if they meet the requirements of 40 CFR 60.759 and are approved in the design plan.

Q3: Will EPA exempt leachate recirculation piping, temporary horizontal collection trenches, and leachate sump/riser connections from the oxygen/nitrogen, temperature, and pressure requirements under NSPS subpart WWW?

A3: No. The facility states that these gas collection systems are not part of the Landfill NSPS collection and control system. However, it appears that these gas collection systems would be part of the Landfill NSPS collection and control system if they are collecting gas from an area, cell, or group of cells if the initial solid waste has been in place for a period of five years or more (if active), or two years or more (if closed or at final grade). Although an exemption will not be granted, the facility may still propose an alternative monitoring procedure.

Q4: Will EPA allow the facility to exclude dangerous areas from the surface monitoring?

A4: 40 CFR 60.753(d) allows for dangerous areas to be excluded. These areas will be reviewed by IDNR as part of the facility's surface monitoring design plan.

Q5: Will EPA allow the facility to apply the surface monitoring requirement only to closed portions of the landfill?

A5: No. Surface monitoring is required in all areas that collection systems are required.

Q6: Will EPA allow the facility to widen the spacing between surface monitoring intervals from 30 meters to 60 meters in areas that will have a final cover in place with a geomembrane component?

A6: No.

Q7: Will EPA allow higher oxygen levels in gas wellheads if temperatures are maintained below 38 degrees C?

A7: Yes. Higher values may be set if the facility demonstrates that the elevated parameters do not cause fires or significantly inhibit anaerobic decomposition by killing methanogens.

Q8: Will EPA allow the facility to place the surface monitoring probe inlet as close as possible, 5 to 10 centimeters from the ground, but further away when there are materials that could clog the probe tip?

A8: No.

Q9: Will EPA allow a variance to the 10-day window that 40 CFR 60.755(c)(4)(ii) allows to adjust the cover and/or collection system?

A9: No. Because this is not an alternative monitoring request, EPA Region 7 does not have the authority to allow this.

Q10: Will EPA allow the facility to not perform surface monitoring during the winter quarter?

A10: No. The facility is apparently concerned that the flame ionization detector will not work unless the ambient air is above freezing. There are days during each quarter that are warm enough to do surface monitoring. The facility has not proposed any alternative monitoring.

Q11: Will EPA allow the facility to record the flow to the flare instead of the presence of a pilot flame?

A11: No. The regulations require continuous records of the flare pilot flame. EPA notes that it does understand that the lack of flame at the flare is not necessarily a violation.

Q12: Will EPA approve a final cover design that includes the use of a geomembrane or synthetic cover and that may have positive pressure at wellheads under certain conditions?

A12: Yes. Positive pressure under these circumstances is allowed by 40 CFR 60.753(b)(2). Pressure limits should be included in the design plan for approval by IDNR.

Abstract for [0400034]

Q: Will EPA approve the use of custom fuel sulfur monitoring schedules under 40 CFR part 60, subpart GG, for natural gas-fired turbines at three Basin Electric Power Cooperative facilities in Wyoming?

A: Yes. Based on an EPA directive dated August 14, 1987, EPA will approve the use of custom fuel sulfur monitoring schedules for natural gas-fired turbines at the facilities in question.

Abstract for [0400035]

Q: Will EPA approve the use of custom fuel sulfur monitoring schedules under NSPS subpart GG, for two natural gas-fired emergency turbine generators at the LaBarge Black Canyon Dehydration Facility in Sublette County, Wyoming?

A: Yes. Based on an EPA directive dated August 14, 1987, EPA will approve the use of custom fuel sulfur monitoring schedules for natural gas-fired turbines at the facility in question.

Abstract for [0400036]

Q: The California Parks and Recreation Department owns and operates an air curtain incinerator that burns clean wood for the purpose of clearing dead trees at state parks. Is this unit subject to NSPS subpart CCCC?

A: No. The activity of this unit is neither commercial nor industrial, and does not burn commercial and industrial waste as defined in 40 CFR 60.2265.

Lisa C. Lund,

Acting Director, Office of Compliance.

[FR Doc. 04–23392 Filed 10–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0349; FRL–7684–4]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review the N-methyl carbamate risk assessment strategies, and methodologies for exposure assessment.

DATES: The meeting will be held on December 3, 2004, from 8:30 a.m. to approximately 5 p.m., eastern time.

Comments: The deadlines for the submission of requests to present oral comments and the submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION**.

Nominations: Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before October 29, 2004.

Special seating: Requests for special seating arrangements should be made at least 5 business days prior to the meeting.

ADDRESSES: The meeting will be held at the Holiday Inn Rosslyn at Key Bridge, 1900 North Fort Myer Drive, Arlington, VA 22209. The telephone number for the Holiday Inn Rosslyn at Key Bridge is (703) 807–2000.

Comments: Written comments may be submitted electronically (preferred), through hand delivery/courier, or by mail. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

Nominations, requests to present oral comments, and specialseating: To submit nominations for ad hoc members of the FIFRA SAP for this meeting, requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. To ensure proper receipt by EPA, your request must identify docket ID number OPP–2004–0349 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Joseph E. Bailey, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–2045; fax number: (202) 564–8382; e-mail addresses: *bailey.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0349. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting), and the meeting agenda will be available as soon as possible, but no later than mid-November 2004. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments in hard copy that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically (preferred), through hand delivery/courier, or by mail. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0349. The

system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0349. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you deliver as described in Unit I.C.2 or mail to the address provided in Unit I.C.3. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Attention: Docket ID Number OPP–2004–0349. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

3. *By mail*. Due to potential delays in EPA's receipt and processing of mail, respondents are strongly encouraged to submit comments either electronically or by hand delivery or courier. We cannot guarantee that comments sent via mail will be received prior to the close of the comment period. If mailed, please send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0349.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this document.

6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2004–0349 in the subject line on the first page of your request.

1. *Oral comments*. Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, November 24, 2004, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments*. Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I., no later than noon, eastern time, November 19, 2004, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting*. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access and assistance for the hearing impaired, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP for this meeting*. As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicit the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Toxicology; physiologically-based pharmacokinetic (PBPK) modeling; exposure modeling (dietary and residential) including Lifeline, Cares and DEEM/Calendex; and probabilistic risk assessment. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before October 29, 2004. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect

to the matters under review, and lack of bias. Though financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including, the candidates' areas of expertise and professional qualifications, and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 12 ad hoc scientists.

If a prospective candidate for service on the FIFRA SAP is considered for participation in a particular session, the candidate is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP candidate is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at EPA (EPA Form 3110–48 5–02) which shall fully disclose, among other financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support. EPA will evaluate the candidate's financial disclosure form to assess that there are no financial conflicts of interest, no appearance of lack of impartiality, and no prior involvement with the development of the primary documents under consideration before the candidate is considered further for service on the FIFRA SAP.

Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticide registrations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of regulations pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Public Meeting

The FIFRA SAP will meet to consider and review the N-methyl carbamate cumulative risk assessment (CRA) strategies, and methodologies for exposure assessment. The FQPA of 1996 amended the laws under which EPA evaluates the safety of pesticide residues in food. Section 408(b)(2)(D)(v) and (vi) of the Federal Food, Drug, and Cosmetic Act, as amended by FQPA, specifies that when determining the safety of a pesticide chemical, EPA shall base its risk assessment on aggregate exposure (i.e., total dietary including drinking water, residential, and other non-occupational exposure) and available information concerning the cumulative effects to human health that may result from exposure to pesticides and other substances that have a common mechanism of toxicity.

EPA is currently preparing a CRA for the N-methyl carbamate class of pesticides. The specific N-methyl carbamate pesticides which will be included in this assessment are the following: Aldicarb; carbaryl; carbofuran; formetanate hydrochloride; methiocarb; methomyl; oxamyl; pirimicarb; propoxur; and thiodicarb (see **Federal Register** notice dated February 4, 2004 (69 FR 5340) (FRL–7334–4)). As was previously done for the CRA for the organophosphorus pesticides, EPA will convene several meetings of the FIFRA SAP to review a number of science issues which are crucial to the development and completion of the N-methyl carbamate CRA.

The first meeting that is being announced in the **Federal Register** notice will be held on December 3, 2004, and will deal with general strategies, and methodologies being considered for use in this CRA and discuss some of the overall issues to be covered at a subsequent meeting of the SAP scheduled for February 2005.

A separate **Federal Register** notice will be issued later announcing the February meeting. In addition to general proposed strategies and methodologies for the N-methyl carbamate CRA, specific topics to be discussed at the December 3, 2004, SAP meeting include, sophisticated PBPK modeling, as well as more conventional relative-potency based approaches, the interface between the exposure models and the PBPK models, and proposals to revise current exposure models to evaluate exposure periods of less than 24 hours.

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 12, 2004.

Joseph J. Merenda, Jr.,

Director, Office of Science Coordination and Policy.

[FR Doc. 04–23396 Filed 10–18–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0343; FRL–7684–6]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory

Panel (FIFRA SAP) to consider and review the use of pharmacokinetic data to refine carbaryl risk estimates from oral and dermal exposure.

DATES: The meeting will be held on December 2, 2004, from 8:30 a.m. to approximately 5 p.m., eastern time.

Comments: The deadlines for the submission of requests to present oral comments and the submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION.**

Nominations: Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before October 29, 2004.

Special seating: Requests for special seating arrangements should be made at least 5 business days prior to the meeting.

ADDRESSES: The meeting will be held at the Holiday Inn Rosslyn at Key Bridge, 1900 North Fort Myer Drive, Arlington, VA 22209. The telephone number for the Holiday Inn Rosslyn at Key Bridge is (703) 807–2000.

Comments: Written comments may be submitted electronically (preferred), through hand delivery/courier, or by mail. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

Nominations, requests to present oral comments, and special seating: To submit nominations for ad hoc members of the FIFRA SAP for this meeting, requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. To ensure proper receipt by EPA, your request must identify docket ID number OPP–2004–0343 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Joseph E. Bailey, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–2045; fax number: (202) 564–8382; e-mail addresses: *bailey.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0343. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting), and the meeting agenda will be available as soon as possible, but no later than mid-November 2004. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments in hard copy that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically (preferred), through hand delivery/courier, or by mail. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your

comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0343. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0343. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you deliver as described in Unit I.C.2 or mail to the address provided in Unit I.C.3. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0343. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

3. *By mail*. Due to potential delays in EPA's receipt and processing of mail, respondents are strongly encouraged to submit comments either electronically or by hand delivery or courier. We cannot guarantee that comments sent via mail will be received prior to the close of the comment period. If mailed, please send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0343.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this document.

6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2004–0343 in the subject line on the first page of your request.

1. *Oral comments*. Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, November 24, 2004, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments*. Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I., no later than noon, eastern time, November 18, 2004, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting*. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access and assistance for the hearing impaired, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP for this meeting*. As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicit the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or

organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Pharmacokinetics/pharmacodynamics, toxicology, and exposure. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before October 29, 2004. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Though financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including, the candidates' areas of expertise and professional qualifications, and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 12 ad hoc scientists.

If a prospective candidate for service on the FIFRA SAP is considered for participation in a particular session, the candidate is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP candidate is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at EPA (EPA Form 3110–48 5–02) which shall fully disclose, among other financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support. EPA will evaluate the candidate's financial disclosure form to assess that there are no financial conflicts of interest, no appearance of lack of impartiality, and no prior involvement with the development of the primary documents under consideration before the candidate is considered further for service on the FIFRA SAP.

Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP website or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticide registrations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of regulations pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Public Meeting

The FIFRA SAP will meet to consider and review the use of pharmacokinetic data to refine carbaryl risk estimates from oral and dermal exposure. The Agency recently completed a human health risk assessment for carbaryl and has since, received a proposal to use pharmacokinetic data to refine risk estimates from oral and dermal exposure from carbaryl use on residential turf. These exposures include, post-application dermal exposure on turf, and hand-to-mouth, object-to-mouth, and soil ingestion exposures in children. The proposal offers a refined approach to calculating a margin of exposure based on target tissue concentrations. This approach compares internal doses in the target tissue, brain, rather than comparing administered doses. The proposal to use this approach was based upon the pharmacokinetic and pharmacodynamic characteristics of carbaryl. Carbaryl has a short half-life in the body and the duration of binding to cholinesterase enzymes is brief. Because of these characteristics, peak brain levels rather than total exposure were proposed for exposure assessment. The purpose of this SAP meeting is to evaluate whether comparison of internal doses in target tissue is a useful way to refine carbaryl risk estimates, and to evaluate the approach used to estimate brain concentrations from intermittent exposure using pharmacokinetic data.

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 12, 2004.

Joseph J. Merenda, Jr.,

Director, Office of Science Coordination and Policy.

[FR Doc. 04–23397 Filed 10–18–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0120; FRL–7685–2]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 13, 2004 to October 1, 2004, consists of the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket identification (ID) number OPPT–2004–0120 and the specific PMN number or TME number, must be received on or before November 18, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPPT–2004–0120. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet underthe ''**Federal Register**'' listings at*http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2004–0120. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0120 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–20040120 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 13, 2004 to October 1, 2004, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent

that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 81 PREMANUFACTURE NOTICES RECEIVED FROM: 09/10/04 TO 10/01/04

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0895	09/13/04	12/11/04	Huntsman Advanced Materials	(S) Epoxy curing agent	(G) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, polymers with C_{18}-unsaturated fatty acids dimers, and an amine
P–04–0896	09/13/04	12/11/04	International flavors and fragrances, Inc.	(S) Ingredient for use in fragrances for soaps, detergents, cleaners and other household products	(S) Oils, gardenia tahitensis
P–04–0897	09/13/04	12/11/04	Incorez Corporation	(S) Polyurethane resin coating	(S) 1,4-butanediol, polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and .alpha.,.alpha.′,.alpha.″-1,2,3-propanetriyltris[.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl]]]
P–04–0898	09/13/04	12/11/04	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Di-substituted acyclic carboxylic acid, ethyl ester
P–04–0901	09/13/04	12/11/04	Gharda Chemical Ltd.	(S) Molding and extrusion; compounding	(G) Polysulfone copolymer
P–04–0902	09/13/04	12/11/04	Huntsman Advanced Materials	(S) Epoxy curing agent	(G) Fattys acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, polymers with C_{18}-unsaturated fatty acid dimers, triethylenetetramine and an amine
P–04–0903	09/13/04	12/11/04	CBI	(G) Fiberglass film former	(G) Allylether functional unsaturated polyester
P–04–0904	09/15/04	12/13/04	Firmenich, Inc.	(S) Aroma chemical for use in fragrance mixtures, that in turn are used in perfumes, soaps, cleaners, etc.	(S) Spiro[5.5.]undec-8-en-1-one, 2,2,7,9-tetramethyl-
P–04–0905	09/15/04	12/13/04	CBI	(G) Viscosity modifier	(G) Polymer of vinyl heterocycle
P–04–0906	09/15/04	12/13/04	CBI	(G) Electronics adhesive	(G) Silicone anhydride
P–04–0907	09/15/04	12/13/04	CBI	(G) Electronics adhesive	(G) Silicone anhydride
P–04–0908	09/17/04	12/15/04	Octel Starreon LLC	(G) Destructive use. pmn chemical is destroyed when fuel is burned.	(G) Polyolefin esters
P–04–0909	09/16/04	12/14/04	NA Industries, Inc.	(S) Ultra violet curable monomer for polymerization	(S) 2-propenoic acid, 2-[2-(ethenyloxy)ethoxy]ethyl ester
P–04–0910	09/16/04	12/14/04	Cognis Corporation	(S) Synthetic lubricant	(S) Fatty acids, $C_{8–10}$, mixed triesters with coco fatty acids and trimethylolpropane
P–04–0911	09/20/04	12/18/04	Basell USA Inc.	(G) Catalyst system component	(G) Aryl-substituted diether propane
P–04–0912	09/20/04	12/18/04	CBI	(G) A raw material for electronic materials	(G) Poly phenylene ether derivative
P–04–0913	09/20/04	12/18/04	Dow Corning Corporation	(G) Intermediate for paint additive	(G) Silsesquioxanes
P–04–0914	09/20/04	12/18/04	CBI	(G) Reactant in thermoset coating or adhesive formulation; degree of containment --- (c) open, non-dispersive use	(G) Amino polyether prepolymer ester
P–04–0915	09/20/04	12/18/04	CBI	(G) Polymeric binder	(G) Styrene-methacrylate copolymer
P–04–0916	09/20/04	12/18/04	CBI	(G) Polymeric binder	(G) Styrene-methacrylate copolymer
P–04–0917	09/20/04	12/18/04	CBI	(G) Polymeric binder	(G) Styrene-methacrylate copolymer
P–04–0918	09/16/04	12/14/04	CBI	(G) Lubricant additive	(G) Alkaryl sulfonic acid, metal salts
P–04–0919	09/16/04	12/14/04	CBI	(G) Lubricant additive	(G) Alkaryl sulfonic acid, metal salts
P–04–0920	09/16/04	12/14/04	CBI	(G) Lubricant additive	(G) Alkaryl sulfonic acid, metal salts
P–04–0921	09/16/04	12/14/04	CBI	(G) Lubricant additive	(G) Alkaryl sulfonic acid, metal salts
P–04–0922	09/16/04	12/14/04	CBI	(G) Lubricant additive	(G) Alkaryl sulfonic acid, metal salts
P–04–0923	09/16/04	12/14/04	CBI	(G) Intermediate	(G) Alkaryl sulfonic acid
P–04–0924	09/16/04	12/14/04	CBI	(G) Intermediate	(G) Alkaryl sulfonic acid
P–04–0925	09/16/04	12/14/04	CBI	(G) Intermediate	(G) Alkaryl sulfonic acid
P–04–0926	09/16/04	12/14/04	CBI	(G) Intermediate	(G) Alkaryl sulfonic acid
P–04–0927	09/16/04	12/14/04	CBI	(G) Intermediate	(G) Alkaryl sulfonic acid
P–04–0928	09/16/04	12/14/04	CBI	(G) Intermediate	(G) Toluene alkylate
P–04–0929	09/16/04	12/14/04	CBI	(G) Intermediate	(G) Toluene alkylate
P–04–0930	09/16/04	12/14/04	CBI	(G) Intermediate	(G) Toluene alkylate
P–04–0931	09/16/04	12/14/04	CBI	(G) Intermediate	(G) Toluene alkylate

I. 81 PREMANUFACTURE NOTICES RECEIVED FROM: 09/10/04 TO 10/01/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0932	09/16/04	12/14/04	CBI	(G) Intermediate	(G) Toluene alkylate
P–04–0933	09/20/04	12/18/04	Nyco Minerals, Inc.	(S) Filler for silicone rubber	(S) Silane, ethenyltriethoxy-, reaction products with wollastonite (ca(sio3))
P–04–0934	09/20/04	12/18/04	Nyco Minerals, Inc.	(S) Filler for polyester resins; filler for coatings	(S) 2-propenoic acid, 2-methyl-, 3-(trimethoxysilyl)propyl ester, reaction products with wollastonite (ca(sio3))
P–04–0935	09/20/04	12/18/04	Nyco Minerals, Inc.	(S) Filler for coatings; filler for epoxy resins	(S) Silane, trimethoxy [3-(oxiranylmethoxy)propyl]-, reaction products with wollastonite (ca(sio3))
P–04–0936	09/20/04	12/18/04	Nyco Minerals, Inc.	(S) Filler for epoxy resins	(S) Silane, (3-chloropropyl)trimethoxy-, reaction products with wollastonite (ca(sio3))
P–04–0937	09/20/04	12/18/04	Dow Corning Corporation	(G) Paint additive	(G) Silsesquioxanes
P–04–0938	09/21/04	12/19/04	CBI	(G) Asphalt additive	(G) Alkyl diamine
P–04–0939	09/21/04	12/19/04	Wacker Silicones a Division of Wacker Chemical Corporation	(S) Additive for plastics and rubbers	(G) Polysiloxane, aminoalkyl terminated polymers with urea functionality alkylbenzene
P–04–0940	09/21/04	12/19/04	CBI	(G) Asphalt additive	(G) Alkyl amine nitrile
P–04–0941	09/21/04	12/19/04	Aldrich Chemical Company, Inc.	(S) Chemical intermediate, destructive use	(S) Silane, dichlorobis(1,1-dimethylpropoxy)-
P–04–0942	09/22/04	12/20/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0943	09/22/04	12/20/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0944	09/22/04	12/20/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0945	09/22/04	12/20/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0946	09/22/04	12/20/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0947	09/22/04	12/20/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0948	09/23/04	12/21/04	CBI	(G) Polymer is applied as a functional coating over inorganic solids.	(G) Siloxane coating
P–04–0949	09/23/04	12/21/04	3M Company	(G) Chemical intermediate for inorganic fibers.	(G) Organic acids aluminum complexes
P–04–0950	09/23/04	12/21/04	CIBA Specialty Chemicals Corporation, Textile Effects	(S) Exhaust application to cotton fabrics	(G) Reaction product of substituted naphthalenesulfonic acid azo substituted phenyl amino substituted triazine compound and substituted phenyl azo substituted naphthalenesulfonic acid
P–04–0951	09/23/04	12/21/04	CBI	(S) Intermediate	(G) N-arylsubstituted phthalimide
P–04–0952	09/21/04	12/19/04	Kelmar Industries, Inc.	(S) Textile softener	(G) Polydimethylsiloxane with aminoalkyl and polyether groups
P–04–0953	09/23/04	12/21/04	CBI	(S) Liquid crystal polymer	(G) Substituted polyester
P–04–0954	09/24/04	12/22/04	Surface Specialties, Inc.	(S) Wetting agent for solvent based paint	(G) Substituted fatty acid
P–04–0955	09/24/04	12/22/04	Kelmar Industries, Inc.	(S) Textile softener	(G) Polydimethylsiloxane with aminoalkyl and polyether groups
P–04–0956	09/23/04	12/21/04	CBI	(S) Curing agent for epoxy coating systems	(G) Mixture of ketimines by reaction of amines with methyl isobutyl ketone
P–04–0957	09/24/04	12/22/04	Essential Industries	(S) Acrylic floor finish	(S) 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, ethenylbenzene, methyl 2-methyl-2-propenoate and 2-methylpropyl 2-methyl-2-propenoate

I. 81 PREMANUFACTURE NOTICES RECEIVED FROM: 09/10/04 TO 10/01/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0958	09/24/04	12/22/04	Essential Industries	(S) Acrylic floor finish	(S) 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, ethenylbenzene, methyl-2-methyl-2-propenoate and 2-methylpropyl 2-methyl-2-propenoate, ammonium salt
P–04–0959	09/27/04	12/25/04	Surface Specialties, Inc.	(S) Hardener for water-thinnable paints	(G) Epoxide-amine adduct
P–04–0960	09/28/04	12/26/04	CBI	(G) Ink	(G) Biphenyl-bis(azo-acetoaceto-benzoate)
P–04–0961	09/29/04	12/27/04	CBI	(G) This material is used to help recover additional quantities of oil from subterranean reservoirs and also to impart improved properties to products derived from such recovered oil.	(G) Arylalkyl sulfonic acid
P–04–0962	09/29/04	12/27/04	CBI	(G) This material is used to help recover additional quantities of oil from subterranean reservoirs and also to impart improved properties to products derived from such recovered oil.	(G) Arylalkyl sulfonic acid
P–04–0963	09/30/04	12/28/04	Nippon Gohsei (U.S.A.) Co. Ltd.	(G) Ultra violet irradiation hardening adhesive	(G) Polyurethaneacrylate
P–05–0001	10/01/04	12/29/04	CBI	(S) Curing agent for epoxy coating systems	(G) Polyamine mannich base
P–05–0002	10/01/04	12/29/04	CBI	(G) Chemical intermediate	(G) Methyl cyano amino ethyl ether
P–05–0003	10/01/04	12/29/04	CBI	(S) Crosslinking agent for automotive coatings	(G) Mixed alkyl urethane of melamine triisocyanate
P–05–0004	10/01/04	12/29/04	CBI	(S) Crosslinking agent for automotive coatings	(G) Trialkyl urethane of melamine triisocyanate
P–05–0005	10/01/04	12/29/04	CBI	(S) Crosslinking agent for automotive coatings	(G) Mixed alkyl urethane of melamine triisocyanate
P–05–0006	10/01/04	12/29/04	CBI	(S) Crosslinking agent for automotive coatings	(G) Trialkyl urethane of melamine triisocyanate
P–05–0007	10/01/04	12/29/04	CBI	(S) Crosslinking agent for automotive coatings	(G) Trialkyl urethane of melamine triisocyanate
P–05–0008	10/01/04	12/29/04	CBI	(S) Crosslinking agent for automotive coatings	(G) Trialkyl urethane of melamine triisocyanate
P–05–0009	10/01/04	12/29/04	Heico Chemicals	(G) Surfactant	(S) Butanedioic acid, 2-octenyl-
P–05–0010	10/01/04	12/29/04	CBI	(G) Catalyst used to facilitate the formation of cellular structure in the production of polyurethane foam.	(G) Trimethyl bis alkylamine bis (aminoethyl) ether
P–05–0011	10/01/04	12/29/04	Clariant Corporation	(S) Flame retardant for polyamide thermoplastic epoxy resins	(S) Phosphinic acid, diethyl-, zinc salt
P–05–0015	10/01/04	12/29/04	CBI	(G) Resin for coatings	(G) Modified acrylic resin
P–05–0016	10/01/04	12/29/04	CBI	(G) Resin for coatings	(G) Modified acrylic resin
P–05–0017	10/01/04	12/29/04	CBI	(G) Resin for coatings	(G) Modified acrylic resin

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 16 NOTICES OF COMMENCEMENT FROM: 09/13/04 TO 10/01/04

Case No.	Received Date	Commencement Notice End Date	Chemical
P–01–0480	09/21/04	08/19/04	(S) Propanol, [(1-methyl-1,2-ethanediyl)bis(oxy)bis-, polymer with 1,1,′-methylenebis[isocyanatobenzene], oxybis[propanol] and alpha,alpha′,alpha″-1,2,3-propanetriyltris[omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)]]
P–02–0230	09/24/04	09/03/04	(G) Acrylic resin
P–02–0319	09/22/04	08/24/04	(G) Imine modified polyamide
P–03–0701	09/21/04	09/15/04	(G) Methylene bicycloalkane
P–04–0050	09/16/04	08/16/04	(G) Polyurethane
P–04–0070	09/20/04	09/02/04	(G) Polyether fatty acid ester
P–04–0095	09/22/04	08/14/04	(G) Polyurethane dispersion

II. 16 NOTICES OF COMMENCEMENT FROM: 09/13/04 TO 10/01/04—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–04–0163	09/15/04	08/04/04	(G) Amine prepolymer
P–04–0452	09/21/04	08/30/04	(G) Benzoic acid, 2-[3-oxo-6-(phenylmethoxy)-2,7-dipropyl-3h-heteropolycycle-9-yl]-, phenylmethyl ester
P–04–0453	09/21/04	08/19/04	(G) Spiro[isobenzofuran-1(3h),9′-[9h]heteropolycycle]-3-one, 3′,6′-dihydroxy-2′,7′-dipropyl-
P–04–0454	09/21/04	09/03/04	(G) Spiro[isobenzofuran-1(3h),9′-[9h]heteropolycycle]-3-one, 3′,-hydroxy-6′-(phenylmethoxy)-2′,7′-dipropyl-
P–04–0471	09/21/04	08/18/04	(G) Modified polyester resin
P–04–0472	09/21/04	08/18/04	(G) Modified polyester resin
P–04–0549	09/20/04	08/25/04	(G) Poly(methacrylic acid) salt in water
P–04–0550	09/20/04	08/17/04	(G) Polyglycolether-polycarboxylate
P–04–0622	09/21/04	09/15/04	(G) Alkyl 2-alkanoate

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: October 13, 2004.

Anthony Cheatham,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 04–23398 Filed 10–18–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7828–5]

Notice of Proposed Agreement for Recovery of Past Response Costs Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as Amended, Bernstein Salvage Superfund Site, Oskaloosa, IA, Docket No. CERCLA–07–2004–0158

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed agreement for past response costs, Bernstein Salvage Site, Oskaloosa, Iowa.

SUMMARY: Notice is hereby given that a proposed agreement regarding the Bernstein Salvage Superfund Site located in Oskaloosa, Iowa, was signed by the United States Environmental Protection Agency (EPA) on July 26, 2004, and by the United States Department of Justice (DOJ) on September 15, 2004.

DATES: EPA will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed agreement.

ADDRESSES: Comments should be addressed to Barbara L. Peterson, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101 and should refer to: In the Matter of Bernstein Salvage Superfund Site, Oskaloosa, Iowa, Union Pacific Railroad (Settling Party), Docket No. CERCLA–07–2004–0158.

The proposed agreement may be examined or obtained in person or by mail from Barbara L. Peterson, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, KS 66101, (913) 551–7277.

SUPPLEMENTARY INFORMATION: This proposed agreement concerns the Bernstein Salvage Superfund Site, located in Oskaloosa, Iowa, and is made and entered into by EPA and Union Pacific Railroad (Settling Party).

In response to the release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. 9604. In performing these response actions, EPA incurred response costs at or in connection with the Site.

Pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), the Settling Party is a responsible party and is liable for response costs incurred or to be incurred at or in connection with the Site. This Agreement requires the Settling Party to pay to the Hazardous Substance Superfund the principal sum of $100,000 in reimbursement of Past Response Costs, plus an additional sum for interest and will resolve the Settling Party's civil liability for these costs. The proposed agreement also includes a covenant not to sue the Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

Dated: September 29, 2004.

James B. Gulliford,

Regional Administrator, United States Environmental Protection Agency, Region VII.

[FR Doc. 04–23263 Filed 10–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7828–4]

Notice of Proposed Agreement for Recovery of Past Response Costs Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as Amended, Bernstein Salvage Superfund Site, Oskaloosa, IA, Docket No. CERCLA–07–2004–0158

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed agreement for past response costs, Bernstein Salvage Site, Oskaloosa, Iowa.

SUMMARY: Notice is hereby given that a proposed agreement regarding the Bernstein Salvage Superfund Site located in Oskaloosa, Iowa, was signed by the United States Environmental Protection Agency (EPA) on June 18, 2004.

DATES: EPA will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed agreement.

ADDRESSES: Comments should be addressed to Barbara L. Peterson, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101 and should refer to: In the Matter of Bernstein Salvage Superfund Site, Oskaloosa, Iowa, Virginia Bernstein and the Virginia Bernstein Revocable Living Trust (Settling Parties), Docket No. CERCLA–07–2004–0158.

The proposed agreement may be examined or obtained in person or by mail from Barbara L. Peterson, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, KS 66101, (913) 551–7277.

SUPPLEMENTARY INFORMATION: This proposed agreement concerns the

Bernstein Salvage Superfund Site, located in Oskaloosa, Iowa, and is made and entered into by EPA and Virginia Bernstein and the Virginia Bernstein Revocable Living Trust (Settling Parties).

In response to the release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. 9604. In performing these response actions, EPA incurred response costs at or in connection with the Site.

Pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), the Settling Parties are responsible parties and are liable for response costs incurred or to be incurred at or in connection with the Site. This Agreement requires the Settling Parties to pay to the Hazardous Substance Superfund the principal sum of $100,000 in reimbursement of Past Response Costs, plus an additional sum for interest and will resolve the Settling Parties' civil liability for these costs. The proposed agreement also includes a covenant not to sue the Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

Dated: September 29, 2004.

James B. Gulliford,

Regional Administrator, United States Environmental Protection Agency, Region VII.

[FR Doc. 04–23265 Filed 10–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7828–6]

Notice of Proposed Agreement for Recovery of Past Response Costs Under the Comprehensive, Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, 42 U.S.C. 9622(h)(1), Helena Chemical Company Superfund Site, Hayti, MO, Docket No. CERCLA–07–2004–0312

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed agreement for recovery of past response costs, Helena Chemical Company Superfund Site, Hayti, Missouri.

SUMMARY: Notice is hereby given that a proposed agreement regarding the Helena Chemical Company Superfund Site located in Hayti, Missouri, was signed by the United States Environmental Protection Agency (EPA) on September 3, 2004.

DATES: EPA will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed agreement.

ADDRESSES: Comments should be addressed to James D. Stevens, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101 and should refer to: In the Matter of Helena Chemical Company Superfund Site, Hayti, Missouri, Docket No. CERCLA–07–2004–0312.

The proposed agreement may be examined or obtained in person or by mail from James D. Stevens, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101, (913) 551–7322.

SUPPLEMENTARY INFORMATION: This proposed Agreement concerns the Helena Chemical Company Superfund Site, located in Hayti, Missouri, and is made and entered into by EPA and BP Products North America, Inc. and Helena Chemical Company (Settling Parties). This Site consists of an approximately 2.6 acre lot, and is located about one-eighth mile east of the City of Hayti in Pemiscot County, Missouri.

In response to the release of hazardous substances including toxaphene, arsenic and dieldrin at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. 9604. In performing these response actions, EPA incurred response costs at or in connection with the Site. In addition, EPA provided oversite of response actions undertaken by the Settling Parties.

Pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), the Settling Parties are responsible parties and are jointly and severally liable for response costs incurred at or in connection with the Site. The Regional Administrator EPA, Region VII, or his designee, has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed $500,000, excluding interest.

This Agreement requires the Settling Parties to pay to the EPA Hazardous Substance Superfund the principal sum of $151,072.65 in reimbursement of Past Response Costs, and will resolve the Settling Parties' alleged civil liability for these costs. The proposed Agreement also includes a covenant not to sue the Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

Dated: September 16, 2004.

James B. Gulliford,

Regional Administrator, United States Environmental Protection Agency, Region VII.

[FR Doc. 04–23264 Filed 10–18–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Deletion of Agenda Item From October 14, 2004, Open Meeting

October 14, 2004.

The following items have been deleted from the list of Agenda items scheduled for consideration at the October 14, 2004, open meeting and previously listed in the Commission's Notice of October 7, 2004.

Item No.	Bureau	Subject
5	Wireline Competition	*Title:* The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–128). *Summary:* The Commission will consider an Order on Reconsideration concerning its payphone compensation rules.
6	Wireline Competition	*Title:* Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring it to be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2) (WC Docket No. 02–78). *Summary:* The Commission will consider a Notice of Proposed Rulemaking concerning section 251 (h)(2) of the Communications Act of 1934, as amended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–23460 Filed 10–15–04; 12:52 pm]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 12, 2004.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Palmetto Heritage Bancshares, Inc., Pawleys Island, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Palmetto Heritage Bank & Trust, Pawleys Island, South Carolina, an organizing bank.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Rural Bancshares of Wisconsin, Inc., Fennimore, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of LSB Holding Company, Livingston, Wisconsin, and thereby indirectly acquire Livingston State Bank, Livingston, Wisconsin.

Board of Governors of the Federal Reserve System, October 13, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–23301 Filed 10–18–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 2, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. UFJ Bank Limited, Nagoya, Japan, and UFJ Holdings, Inc., Osaka, Japan; to retain shares of UFJ Central Leasing, Nagoya, Japan, and thereby engage through Central Leasing (U.S.A.), Inc., Florence, Kentucky, in the leasing of manufacturing equipment and computers as well as real estate leasing, pursuant to section 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, October 13, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.04–23302 Filed 10–18–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

[Docket No. OP–1214]

Proposal to Withdraw from Noncash Collection Service

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; request for comment.

SUMMARY: The Board requests comment on a proposal that the Federal Reserve Banks withdraw from the noncash collection service at year-end 2005. The noncash collection service involves the collection and processing of definitive municipal bonds and coupons issued by state and local governments. The proposal to exit this service is prompted by the declining volume of definitive municipal securities, the expected underrecovery of costs in future years, and the availability of alternate service providers and substitutable services.

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

ADDRESSES: You may submit comments, identified by Docket No. OP–1214, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*
- *FAX:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed

electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.,) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Kent Owens, Manager (202/728–5848), or Lyndsay Huot, Financial Services Analyst (202/452–5238), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired only: Telecommunications Device for the Deaf, 202/263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Reserve Banks provide a service to depository institutions for the collection of definitive municipal securities. Definitive municipal securities are registered or bearer bonds that have been issued with interest coupons in certificated, or physical, form by local governments, as well as by states and their political subdivisions and agencies.[1] The Reserve Banks accept deposits of coupons or bonds from depository institutions, identify the appropriate paying agent, and present the items to the paying agent for collection. These services are collectively referred to as the ''noncash collection service.''

Over the years, the number of outstanding definitive municipal securities has declined as a result of legal and market changes. Municipalities stopped issuing bearer municipal securities in 1983, when the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 removed the tax advantages of bearer municipal securities for investors. Further, the securities industry began issuing and trading municipal securities in book-entry form and began immobilizing existing securities. These changes also had implications for the noncash collection service, because the volume of bonds and coupons presented for collection declines as the number of outstanding definitive municipal securities declines.

In response to these market trends, in the early 1990s the Reserve Banks reviewed their role in the definitive securities business, in both the areas of safekeeping and collection. In 1993, the Reserve Banks withdrew from the priced definitive securities safekeeping service but decided to continue providing the priced noncash collection service.[2] Given the volume declines, the Reserve Banks aggressively pursued cost savings through consolidation and improvements in processing efficiencies. Between 1992 and 1997, the existing twenty-two noncash collection operations sites were consolidated into one site.

II. Discussion

Volume, Customers, and Paying Agents

Since 1995, the Reserve Banks' noncash collection volume has decreased 85 percent. Over the past five years, volume has decreased an average of 20 percent annually and is expected to decline by one-third in 2005. Over the last few years, as interest rates have fallen, issuers have called high-interest-rate bonds, including those in definitive form, and issued bonds in book-entry form with lower rates, thereby accelerating the volume decline. The last bearer municipal bond is expected to mature in 2030.

In addition to declining volume, the Reserve Banks' noncash collection service has also experienced a decline in the number of customers that use the service. In 2003, approximately 1,000 depository institutions used the noncash collection service, 10 percent fewer than in 2002. In addition, use of the service is highly concentrated, as the top twenty-five depository institution customers accounted for 70 percent of total revenue in 2003.

Moreover, the Reserve Banks have been presenting noncash collection items to a declining number of paying agents over the past several years due to the consolidation of paying agents through mergers and acquisitions. Currently, the Reserve Banks present to around 100 paying agents, whereas in the past this number had been as high as 3,500. In addition to the decline in the number of paying agents, there is also a significant degree of concentration in the business, with almost 95 percent of coupon envelope volume being presented to ten paying agents in 2003.

Costs and Revenue

Between 1994 and 2003, the noncash collection service has recovered 109.5 percent of its costs, including imputed expenses and return on equity. In 2004, the Reserve Banks expect the service's cost recovery rate to be 110.4 percent. Given the significant decline in volume and the fixed-cost nature of the service, the Reserve Banks expect a significant underrecovery of costs, beginning in 2005. The Reserve Banks have considered price increases to target full cost recovery, but analysis suggests that price increases may accelerate volume loss and reduce revenue.

In addition, more than one-third of total noncash collection service revenue in 2003 came from return-item fees. A return-item fee is charged to depository institutions for submitting coupons that are returned from the paying agent, primarily due to the deposit and return of coupons from called bonds. In these cases, the institution pays not only the $35 return-item fee, but also the cash-letter and coupon-envelope fee; and it does not receive payment for the returned item.[3] Of the approximately 1,000 customers that used the noncash collection service in 2003, 56 percent were charged a return-item fee at least once. Because the Reserve Banks no longer provide a safekeeping service for municipal securities, there is no readily available way for the noncash collection service to track called bonds.

Alternatives to Using the Reserve Banks' Noncash Collection Service

DTC provides both a securities safekeeping service and an over-the-counter collection service for its participants. The over-the-counter coupon collection service, implemented in 1995 in response to participants' requests, is comparable to the noncash collection service, in that DTC acts as a ''pass-through'' by collecting securities and then sending them to the appropriate paying agent. In 2003, DTC processed 12,800 coupon envelopes through its over-the-counter coupon collection service. The Reserve Banks charge $4.50 per coupon envelope plus $13.00 for the cash letter that must accompany any deposit of coupon envelopes. DTC charges $21.00 to $23.00 per coupon envelope and does not require an accompanying cash letter.[4] For return items, the Reserve Banks charge $35.00 per envelope, while DTC charges $15.00. In addition, it is likely that customers would be charged significantly fewer return-item fees if they used DTC. Because DTC provides a safekeeping service for securities, it maintains information on partially and fully called bonds and notifies its customers if they deposit

[1] Such securities are ''noncash'' items under Regulation J (12 CFR 210.2(k)).

[2] The Reserve Banks continue to provide safekeeping for collateral pledged to the discount window, the Treasury Department, or federal government agencies.

[3] Once a bond is called, it must be presented for redemption with all unpaid coupons dated after the call date for early redemption, as these coupons are no longer payable. Coupons with interest dates payable prior to the call date may still be presented separately for redemption.

[4] DTC charges $21.00 per envelope if the CUSIP is noted on the envelope and $23.00 if a customer-assigned identifier is used instead. All Reserve Bank and DTC fees are from the 2004 fee schedules. The Reserve Banks' fee schedule can be found at *http://www.frbservices.org/FeeSchedules/CollectionMunicipal2004.html*. DTC's fee schedule can be found at *http://www.dtc.org/dtcpublic/pdf/rulesandfees/aboutfees.pdf*.

items associated with a called bond before presenting these items to the paying agents, thereby eliminating returns due to called bonds. In addition to the benefits for depositors, paying agents would also benefit from the reduction in return items because they incur costs to handle items received that must be returned to the depositor. DTC's provision of safekeeping services also presents an opportunity to work with depository institutions that use DTC as their alternative to immobilize additional securities.

Correspondent banks also provide services to their customers for the processing of definitive municipal securities. Many of the Reserve Banks' largest noncash collection customers indicated that a significant portion of their transactions are on behalf of other depository institutions. This suggests that many market participants are already using correspondent banks as alternative service providers. Interviews with several of these large banks suggest that they would be able to use DTC or present directly to paying agents if the Reserve Banks were to withdraw from the service. Thus, it appears that these correspondent banks offer a reasonable alternative service to noncash collection customers that are not DTC participants.

Finally, market participants can present directly to the paying agent as a substitute to using the noncash collection service or similar ''pass-through'' services. Depository institutions that present directly would avoid explicit fees, as paying agents do not charge presenters for the redemption of definitive municipal coupons and bonds; however, they may incur additional internal resource costs to present items directly rather than use a fee-based service provider. To facilitate the identification of paying agents, the Reserve Banks are considering making their paying agent database, current as of the last day of the service, available on the Internet. This database includes securities descriptions and associated paying agents, including phone numbers and addresses. With this and other tools, depository institutions would have a number of ways to identify the paying agents for direct presentment. First, a depository institution would probably start with the paying agent identified in the Reserve Banks' database or with the paying agent information printed on the original bond. Because paying agents sometimes change, a depository institution would next check with the identified paying agent to confirm the information. As an alternative, a depository institution could use an on-line service such as the Bond Buyer or Bloomberg, or it could contact the issuing municipality to determine the current paying agent. Furthermore, it has become easier for depository institutions to identify paying agents as the number of paying agents has declined and the concentration of the business among the top few paying agents has increased. Discussions with several major paying agents indicate that these trends are expected to continue.

III. Analysis of Request To Withdraw

The Board has analyzed the proposal in the context of the factors for evaluating Reserve Banks requests to withdraw from a priced service line.[5] The evaluation against each factor is detailed below.

1. *It is likely that other service providers would supply an adequate level of the same service (i.e. access, price, and quality) in the relevant market(s) if the Federal Reserve withdraws from the service.*

The Board's analysis suggests that depository institutions have a number of options available for the processing of definitive municipal securities. DTC and some correspondent banks provide services similar to the Reserve Banks' noncash collection service. Noncash collection customers that are also participants in DTC would be able to use DTC's coupon collection service as an alternative. If a customer is not already a participant in DTC, the benefits of using DTC for its municipal securities processing may not outweigh the cost of becoming a participant.[6] These customers could use a correspondent bank to obtain noncash collection services. These correspondent institutions may, in turn, use DTC services, if they are participants, or they may present directly to the paying agents. These options should supply an adequate level of the same, or similar, service to customers that want to continue to use a service provider for a fee.

2. *If other service providers are not likely to provide an adequate level of the same service in the relevant market(s), it is likely that users of the service could obtain other substitutable services that could reasonably meet their needs.*

In addition to the alternate service providers available, depository institutions have the option of presenting directly to the paying agent for the redemption of their definitive municipal securities. While depository institutions may incur additional internal resource costs to present directly, paying agents do not charge presenters for the redemption of their coupons or bonds. This option should reasonably meet the needs of customers that want to use their own resources to process definitive municipal securities, rather than use a fee-based service provider.

3. *Withdrawal from the service would not have a material, adverse effect on the Federal Reserve's ability to provide an adequate level of other services.*

Withdrawal from the noncash collection service should have no material, adverse effect on the Federal Reserve's ability to provide an adequate level of any other service. The noncash collection service is a standalone business and is the smallest Reserve Bank priced service, representing less than 0.2 percent of the total budgeted priced financial services costs in 2004. In addition, the proposed withdrawal by the Reserve Banks from the municipal coupon and bond collection process does not include nor have any impact upon the redemption of Treasury coupons, currently handled by the Reserve Banks.

4. *Withdrawal from the service would not have a material, adverse effect on the Federal Reserve's ability to discharge other responsibilities.*

Withdrawal from the noncash collection service should have no material, adverse effect on the Federal Reserve's ability to discharge any other responsibilities. There are no material linkages between this service and any other Federal Reserve responsibilities, with the exception of a small amount of definitive municipal securities being held in safekeeping for the Treasury Tax and Loan and Discount collateral programs. This linkage is minimal and only occurs with coupons that are deposited and collected by the Reserve Banks on behalf of the depository institutions holding collateral for these programs. For example, Reserve Banks deposited only 4 of the 23,787 coupon envelopes processed by the noncash collection service in January 2004, which is historically one of the highest-volume months.

5. *The public benefits of continued Federal Reserve provision of the service do not outweigh the benefits of withdrawing from the service. [The Board would consider whether there was any other public benefit, not addressed under the previous factors, that could be achieved through continued provision of the service.]*

[5] The factors, adopted in 1992, are described in the Board's policy statement ''Factors for Evaluating Reserve Bank Requests to Withdraw from a Priced Service Line,'' Federal Reserve Regulatory Service 9–1575, 57 FR 53113, Nov. 6, 1992.

[6] The fee for a DTC participant account is $760 per account per month for the first five accounts.

As discussed in detail in this notice, the Reserve Banks expect that the substantial decline in volume and customers for the noncash collection service will make it difficult for the Reserve Banks to recover the costs of the service in the coming years. The availability of other reasonable options for depository institutions to collect definitive municipal securities and coupons is addressed under the previous factors. In addition, the public benefit that the Reserve Banks provide in identifying for customers the appropriate paying agent has diminished commensurate with the decline in the number of paying agents (from 3,500 to 100). The Board has not identified any other public benefits that could be achieved through continued provision of the service that would outweigh the benefits of withdrawing from the service.

IV. Request for Comment

The Board requests comment on the Reserve Banks' proposal to withdraw from the noncash collection service at the end of 2005 and the Board's analysis of the proposal. In addition, the Board requests specific comments in the following areas:

(1) Are there alternative service providers or substitutable services, in addition to DTC, correspondent banks, and direct presentment, that have not been identified in this notice?

(2) If presenting directly to paying agents, would customers find it useful to have access to the Reserve Banks' paying agent database, which would be current as of the last day of the service? This database includes securities descriptions and associated paying agents, including phone number and address.

(3) Are there other tools that customers would find useful to facilitate the transition?

(4) Are there any public benefits of continued provision of the service by the Reserve Banks that have not been identified in this notice?

V. Competitive Impact Analysis

The Board has established procedures for assessing the competitive impact of changes that have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services, due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve deriving from such differences.[7] The proposed withdrawal by the Reserve Banks from the noncash collection service will leave the provision of this service to private-sector providers; therefore, it will have no material, adverse effect on the ability of other service providers to compete effectively with the Federal Reserve Banks in providing similar services.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. ch. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the proposal under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposal.

By order of the Board of Governors of the Federal Reserve System, October 14, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–23378 Filed 10–18–04; 8:45 am]

BILLING CODE 6210–01–P

[7] These procedures are described in the Board's policy statement ''The Federal Reserve in the Payments System,'' Federal Reserve Regulatory Service 9–1558.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye 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 Eye Institute Special Emphasis Panel, Core (P30) and Infrastructure (R24) Grant Applications.

Date: November 10, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Anne E Schaffner, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, (301) 451–2020, *aes@nei.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 12, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23336 Filed 10–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye 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 Eye Institute Special Emphasis Panel, Career development award applications.

Date: November 1, 2004.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, Division of Extramural Research, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Anne E. Schaffner, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, (301) 451–2020, *aes@nei.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 12, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23337 Filed 10–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Small Research Grants—(RO3s).

Date: October 27, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Guo HE Zhang, PhD, MD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20817, 301–451–6524, *zhanggu@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 12, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23338 Filed 10–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel, Genetic Control of Limb Development.

Date: November 9, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg., Rm. 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 12, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23339 Filed 10–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The 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 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 Child Health and Human Development Special Emphasis Panel Pediatric Pharmacology Research Units Coordinating Center.

Date: November 5, 2004.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6902, *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 12, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23340 Filed 10–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel RFA—Genetic and Proteomic Cohort for Premature Birth Research.

Date: November 9–10, 2004.

Time: 9:30 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: Kishena C. Wadhwani, PhD, MPH, Scientific Review Administrator, Division of Scientific Review, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892–7510, (301) 496–1485, *wadhwank@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 12, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23341 Filed 10–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel; Training Grant Applications Subcommittee Meeting.

Date: November 8, 2004.

Time: 9:30 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: Kishena C. Wadhwani, PhD, MPH, Scientific Review Administrator, Division of Scientific Review, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892–7510, (301) 496–1485, *wadhwank@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 12, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23342 Filed 10–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical and Treatment Subcommittee, October 28, 2004, 8 a.m. to October 29, 2004, 4 p.m., Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852 which was published in the **Federal Register** on October 24, 2004, V.69, 185, P.57328.

The meeting will be held at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814 instead of at the Doubletree Hotel. The meeting location is the only change. The meeting is closed to the public.

Dated: October 12, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23343 Filed 10–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 Child Health and Human Development Initial Review Group Population Sciences Subcommittee.

Date: November 8–9, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 12, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23345 Filed 10–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel Molecular Bases of Male Infertility.

Date: November 10, 2004.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: American Inn of Bethesda, 8130 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child

Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 12, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23346 Filed 10–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Amyloid Imaging in Aging.

Date: November 2–3, 2004.

Time: 6 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro, Bethesda, MD 20814.

Contact Person: William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Neurodegeneration Pathway.

Date: November 4–5, 2004.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Alpha-Synuclein in Aging.

Date: November 9, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Louise L. Hsu, PhD, Scientific Review Office, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–7705, *hsul@exmur.nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Sleep Centers.

Date: November 9, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 402–7706, *markowsa@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel, Population Health and Aging.

Date: November 10, 2004.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Ave., Room 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, (301) 496–9666, *latonia@mail.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel, Nathan Shock Center on Aging.

Date: November 16–17, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alessandra M. Bini, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7708.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 7, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23347 Filed 10–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Diabetes Proteomics and Metabolomics (PAR–04–076).

Date: November 15, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Small Grants in Digestive Diseases and Nutrition.

Date: December 3, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@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: October 7, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23348 Filed 10–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Oral, Dental and Craniofacial Sciences Study Section, October 26, 2004, 8:30 a.m., to October 27, 2004, 3 p.m., The River Inn, 924 25th Street, NW., Washington, DC 20037, which was published in the **Federal Register** on October 5, 2004, 69 FR 59602–50603.

The meeting will be held at Comfort Inn—Pentagon, 2480 South Glebe Road, Arlington, VA 22206. The dates and time remain the same. The meeting is closed to the public.

Dated: October 12, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23344 Filed 10–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Genetic Variation and Evolution Study Section, October 14, 2004, 8 a.m., to October 16, 2004, 4 p.m., The River Inn, 924 25th Street, NW., Washington, DC 20037, which was published in the **Federal Register** on September 16, 2004, 69 FR 55830–55832.

The meeting is cancelled due to lack of quorum.

Dated: October 17, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23349 Filed 10–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Renal and Urological Studies Integrated Review Group Cellular and Molecular Biology of the Kidney Study Section.

Date: October 12–13, 2004.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198, *hildens@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CBSS (01) Cancer Biomarkers.

Date: October 24–26, 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: Mary Bell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7804, Bethesda, MD 20892, (301) 451–8754, *bellmar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gonorrhea.

Date: October 26, 2004.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Rm 3206, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20982, (301) 435–1149, *elzaataf@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Clinical CV.

Date: November 3–4, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel SBIR Disease, Health Related Behavior and Education.

Date: November 3, 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: Claire E. Gutkin, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, (301) 594–3139, *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Research Ethics Study Section.

Date: November 3, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Muscle.

Date: November 3, 2004.

Time: 9:30 a.m. to 12:30 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: Aftab A. Ansari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 594–6376, *ansaria@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Prokaryotic

and Eukaryotic Genetics and Molecular Biology.

Date: November 3–5, 2004.

Time: 7 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: Mary P. McCormick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1047, *mccormim@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fetal Basis for Adult Disease.

Date: November 3–4, 2004.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Ray Bramhall, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046 F, MSC 7892, Bethesda, MD 20892, (910) 458–1871, *bramhalr@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: October 7, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23350 Filed 10–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences (NIEHS); National Toxicology Program (NTP); NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM): Availability of Updated Standardized *In Vitro* Cytotoxicity Test Method Protocols for Estimating Acute Oral Systemic Toxicity; Request for Existing *In Vivo* and *In Vitro* Acute Toxicity Data

Summary: NICEATM announces the availability of two updated standardized in vitro cytotoxicity test method protocols to estimate acute oral systemic toxicity in rodents. These two test methods were previously recommended by the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) for selecting starting doses for in vivo acute oral systemic toxicity tests (**Federal Register** Vol. 66, No. 189, pages 49686–49687, September 28, 2001). This approach can reduce the number of animals required for acute oral toxicity testing. NICEATM also requests the submission of existing and future data on chemicals and products tested for both acute oral systemic toxicity and in vitro cytotoxicity using the standardized test method protocols mentioned in this notice. These data will be used to further evaluate the usefulness and limitations of cytotoxicity methods for estimating in vivo acute oral toxicity. The data will also be used to establish a database to support the investigation of other test methods necessary to improve the accuracy of in vitro assessments of acute systemic toxicity.

Availability of Standardized Test Method Protocols for Estimating Starting Doses for *In Vivo* Acute Oral Toxicity Tests

Updated standardized protocols for two neutral red uptake assays using either BALB/c 3T3 cells or normal human keratinocytes are now available at: *http://iccvam.niehs.nih.gov/methods/invitro.htm.* These test method protocols have been improved to maximize intra- and inter-laboratory reproducibility and are currently being used for the final phase of a joint NICEATM-European Center for the Validation of Alternative Methods (ECVAM) validation study. NICEATM recommends that these updated test method protocols be used in place of standard operating procedures previously recommended by ICCVAM for two cytotoxicity test methods to estimate starting doses for in vivo acute oral toxicity tests (ICCVAM, 2001b).

Submission of Chemical and Protocol Information/Test Data

In vivo and in vitro acute toxicity testing data for chemicals or products should be sent by mail, fax or e-mail to NICEATM [Dr. William S. Stokes, Director, NICEATM, NIEHS, PO Box 12233, MD EC–17, Research Triangle Park, NC 27709, (phone) 919–541–2384, (fax) 919–541–0947, (e-mail) *iccvam@niehs.nih.gov*]. Data will be accepted at any time. Data submitted within the next 9 months will be considered during an evaluation of the validation status of the two cytotoxicity methods anticipated in late 2005. Chemical and protocol information/test data submitted in response to this notice may be incorporated in future NICEATM and ICCVAM reports and publications as appropriate.

When submitting chemical and protocol information/test data, please reference this **Federal Register** notice and provide appropriate contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, as applicable).

NICEATM prefers data to be submitted as copies of pages from study notebooks and/or study reports, if available. Raw data and analyses available in electronic format may also be submitted. Each submission for a chemical should preferably include the following information, as appropriate:

- Common and trade name
- Chemical Abstracts Service Registry Number (CASRN)
- Chemical and/or product class
- Commercial source
- In vitro basal cytotoxicity test protocol used
- In vitro cytotoxicity test results
- In vivo acute oral toxicity test protocol used
- Individual animal responses at each observation time (if available)
- The extent to which the study complied with national or international Good Laboratory Practice (GLP) guidelines
- Date and testing organization

Those persons submitting data on chemicals tested for in vitro basal cytotoxicity are referred to the standard test-reporting template recommended for the High Production Volume (HPV) program at *http://www.epa.gov/chemrtk/toxprtow.htm* or at *http://iccvam.niehs.nih.gov/methods/invitro.htm.* In vivo data for the same chemicals should be reported as recommended in the test reporting section of the current Environmental Protection Agency (EPA) guideline for acute oral toxicity (EPA, 2002).

Submitted data will be used to further evaluate the usefulness and limitations of in vitro cytotoxicity data for estimating acute oral toxicity, and will be included in a database to support the investigation of other test methods necessary to improve the accuracy of in vitro assessments of acute systemic toxicity.

History

In September 2001, the ICCVAM recommended that in vitro cytotoxicity test methods be considered as a tool for estimating starting doses for in vivo acute systemic toxicity testing studies (**Federal Register** Vol. 66, No. 189, pages 49686–49687, September 28, 2001.) The recommendations were based on the Report of the International Workshop on In Vitro Methods for Assessing Acute Systemic Toxicity (ICCVAM, 2001a). The Guidance Document on Using In Vitro Data to Estimate In Vivo Starting Doses for Acute Toxicity (ICCVAM, 2001b) was

also made available at that time. The guidance document provided standard operating procedures for two cytotoxicity test methods and instructions for using these assays to estimate starting doses for in vivo testing.

Federal agency responses to the ICCVAM test method recommendations were announced on March 10, 2004 (**Federal Register** Vol. 69, No. 47, pages 11448–11449). Federal agencies agreed to encourage, to the extent applicable, the use of in vitro tests for determining starting doses for acute systemic toxicity testing. Furthermore, EPA specifically encouraged those participating in the HPV Challenge Program to consider using the recommended in vitro tests as a supplemental component in conducting any new in vivo acute oral toxicity studies for the program (*http://www.epa.gov/chemrtk/toxprtow.htm*).

A NICEATM–ECVAM validation study was initiated in 2002 to evaluate the usefulness of the two neutral red uptake cytotoxicity assays currently available for predicting starting doses for in vivo acute oral toxicity tests. During the pre-validation phases of the study, the test method protocols were further standardized and revised to improve their intra- and inter-laboratory reproducibility. NICEATM recommends using the revised test method protocols rather than the standard operating procedures outlined in the guidance document (ICCVAM, 2001b.) The guidance document should be consulted for the procedure for calculating starting doses using in vitro cytotoxicity data.

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from fifteen Federal regulatory and research agencies that use, generate, or disseminate toxicological information. ICCVAM promotes the development, validation, regulatory acceptance, and national and international harmonization of toxicological test methods that more accurately assess the safety or hazards of chemicals and products, and test methods that refine, reduce and replace animal use. The ICCVAM Authorization Act of 2000 (available at *http://iccvam.niehs.nih.gov/about/PL106545.htm*) established ICCVAM as a permanent interagency committee of the NIEHS under the NICEATM. NICEATM administers the ICCVAM and provides scientific support for ICCVAM and ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of Federal agencies. Additional information about ICCVAM and NICEATM can be found at the following Web site: *http://iccvam.niehs.nih.gov/.*

References

EPA. 2002. Health Effects Test Guidelines, OPPTS 870.1100, Acute Oral Toxicity, EPA 712–C–02–190. Available at: *http://www.epa.gov/opptsfrs/OPPTS_Harmonized/870_Health_Effects_Test_Guidelines/Series/870–1100.pdf.*

ICCVAM (Interagency Coordinating Committee on the Validation of Alternative Methods). 2001a. Report of the international workshop on in vitro methods for assessing acute systemic toxicity. NIH Publication 01–4499. Research Triangle Park, NC: National Institute for Environmental Health Sciences. Available at: *http://iccvam.niehs.nih.gov/.*

ICCVAM. 2001b. Guidance document on using in vitro data to estimate in vivo starting doses for acute toxicity. NIH Publication 01–4500. Research Triangle Park, NC: National Institute for Environmental Health Sciences. Available at: *http://iccvam.niehs.nih.gov/.*

Dated: October 6, 2004.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 04–23335 Filed 10–18–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD17–04–002]

Cook Inlet Regional Citizen's Advisory Committee; Charter Renewal

AGENCY: Coast Guard, DHS.

ACTION: Notice of recertification.

SUMMARY: The Coast Guard has recertified the Cook Inlet Regional Citizen's Advisory Council for the period covering September 1, 2004 through August 31, 2005. Under the Oil Terminal and Oil Tanker Environmental Oversight Act of 1990, the Coast Guard may certify on an annual basis an alternative voluntary advisory group in lieu of a regional citizens' advisory council for Cook Inlet, Alaska. This advisory group monitors the activities of terminal facilities and crude oil tankers under the Cook Inlet Program established by the statute.

DATES: The Cook Inlet Regional Citizen's Advisory Council is certified through August 31, 2005.

ADDRESSES: You may request a copy of the recertification letter by writing to Commander, Seventeenth Coast Guard District (mor), P.O. Box 25517, Juneau, AK 99802–5517.

FOR FURTHER INFORMATION CONTACT: Lieutenant Andrew Vanskike, Seventeenth Coast Guard District (mor), 907–463–2818.

SUPPLEMENTARY INFORMATION:

Background And Purpose

On September 1, 2004, the Coast Guard recertified the Cook Inlet Regional Citizen's Advisory Council (CIRCAC) through August 31, 2005. Under the Oil Terminal and Oil Tanker Environmental Oversight Act of 1990 (33 U.S.C. 2732), the Coast Guard may certify, on an annual basis, an alternative voluntary advisory group in lieu of a regional citizens' advisory council for Cook Inlet, Alaska. This advisory group monitors the activities of terminal facilities and crude oil tankers under the Cook Inlet Program established by Congress, 33 U.S.C. 2732 (b).

On September 16, 2002, the Coast Guard published a notice of policy on revised recertification procedures for alternative voluntary advisory groups in lieu of councils at Prince William Sound and Cook Inlet, AK (67 FR 58440, 58441). This revised policy indicated that applicants seeking recertification in 2003 and 2004 need only submit a streamlined application and public comments would not be solicited prior to recertification.

Dated: September 24, 2004.

James C. Olson,

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

[FR Doc. 04–23370 Filed 10–18–04; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Notice of Adjustment of Countywide Per Capita Impact Indicator

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: FEMA gives notice that the countywide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2004 will be increased.

DATES: Effective October 1, 2004 and applies to major disasters declared on or after October 1, 2004.

FOR FURTHER INFORMATION CONTACT: James A. Walke, Recovery Division, Federal Emergency Management

Agency, Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: Response and Recovery Directorate Policy No. 9122.1 provides that FEMA will adjust the countywide per capita impact indicator under the Public Assistance program to reflect annual changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice of an increase in the countywide per capita impact indicator to $2.84 for all disasters declared on or after October 1, 2004.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 2.7 percent for the 12-month period ended in August 2004. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 16, 2004.

(Catalog of Federal Domestic Assistance No. 97.036, Public Assistance Grants.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23320 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1549–DR]

Alabama; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–1549–DR), dated September 15, 2004, and related determinations.

DATES: Effective October 8, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 15, 2004:

Cleburne County for Public Assistance.

Colbert, Cullman, Dale, Dekalb, Franklin, Lamar, Lawrence, Lee, Marion, Marshall, Pike, Tallapoosa, and Winston Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23323 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1539–DR]

Florida; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1539–DR), dated August 13, 2004, and related determinations.

DATES: Effective October 7, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 7, 2004, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), in a letter to Michael D. Brown, Under Secretary for Emergency Preparedness and Response, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from a tropical storm and four major hurricanes within six weeks, including Tropical Storm Bonnie and Hurricane Charley on August 11–30, 2004; Hurricane Frances on September 3, 2004, and continuing; Hurricane Ivan on September 13, 2004, and continuing; and Hurricane Jeanne on September 24, 2004, and continuing, is of sufficient severity and magnitude that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act).

Therefore, I amend my declarations of August 13, 2004, September 4, 2004, September 16, 2004, and September 26, 2004, to authorize Federal funds for Public Assistance, including direct Federal assistance, at 90 percent of total eligible costs, except those categories, including direct Federal assistance, previously approved at 100 percent.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The law specifically prohibits a similar adjustment for funds provided to States for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of Florida and the Federal Coordinating Officer of these amendments to my major disaster declarations.

These cost shares are effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23311 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1545–DR]

Florida; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency

Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1545–DR), dated September 4, 2004, and related determinations.

DATES: Effective October 7, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 7, 2004, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), in a letter to Michael D. Brown, Under Secretary for Emergency Preparedness and Response, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from a tropical storm and four major hurricanes within six weeks, including Tropical Storm Bonnie and Hurricane Charley on August 11–30, 2004; Hurricane Frances on September 3, 2004, and continuing; Hurricane Ivan on September 13, 2004, and continuing; and Hurricane Jeanne on September 24, 2004, and continuing, is of sufficient severity and magnitude that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act).

Therefore, I amend my declarations of August 13, 2004, September 4, 2004, September 16, 2004, and September 26, 2004, to authorize Federal funds for Public Assistance, including direct Federal assistance, at 90 percent of total eligible costs, except those categories, including direct Federal assistance, previously approved at 100 percent.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The law specifically prohibits a similar adjustment for funds provided to States for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of Florida and the Federal Coordinating Officer of these amendments to my major disaster declarations.

These cost shares are effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23312 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1551–DR]

Florida; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1551–DR), dated September 16, 2004, and related determinations.

EFFECTIVE DATE: October 7, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 7, 2004, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§5121–5206 (Stafford Act), in a letter to Michael D. Brown, Under Secretary for Emergency Preparedness and Response, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from a tropical storm and four major hurricanes within six weeks, including Tropical Storm Bonnie and Hurricane Charley on August 11–30, 2004; Hurricane Frances on September 3, 2004, and continuing; Hurricane Ivan on September 13, 2004, and continuing; and Hurricane Jeanne on September 24, 2004, and continuing, is of sufficient severity and magnitude that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act).

Therefore, I amend my declarations of August 13, 2004, September 4, 2004, September 16, 2004, and September 26, 2004, to authorize Federal funds for Public Assistance, including direct Federal assistance, at 90 percent of total eligible costs, except those categories, including direct Federal assistance, previously approved at 100 percent.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The law specifically prohibits a similar adjustment for funds provided to States for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of Florida and the Federal Coordinating Officer of these amendments to my major disaster declarations.

These cost shares are effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23313 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1561–DR]

Florida; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1561–DR), dated September 26, 2004, and related determinations.

DATES: Effective October 7, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 7, 2004, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), in a letter to Michael D. Brown, Under Secretary for Emergency Preparedness and Response, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from a tropical storm and four major hurricanes within six weeks, including Tropical Storm Bonnie and Hurricane Charley on August 11–30, 2004; Hurricane Frances on September 3, 2004, and continuing; Hurricane Ivan on September 13, 2004, and continuing; and Hurricane Jeanne on September 24, 2004, and continuing, is of sufficient severity and magnitude that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act).

Therefore, I amend my declarations of August 13, 2004, September 4, 2004, September 16, 2004, and September 26, 2004, to authorize Federal funds for Public Assistance, including direct Federal assistance, at 90 percent of total eligible costs, except those categories, including direct Federal assistance, previously approved at 100 percent.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The law specifically prohibits a similar adjustment for funds provided to States for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of Florida and the Federal Coordinating Officer of these amendments to my major disaster declarations.

These cost shares are effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23314 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1560–DR]

Georgia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–1560–DR), dated September 24, 2004, and related determinations.

DATES: Effective Date: October 8, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 24, 2004:

The county of Pierce for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23328 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1562–DR]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1562–DR), dated September 30, 2004, and related determinations.

DATES: Effective September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 30, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Kansas, resulting from severe storms, flooding, and tornadoes on August 27 through August 30, 2004, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas; Hazard Mitigation throughout the State; and any other forms of assistance under the Stafford Act you may deem appropriate. Direct Federal Assistance is authorized, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the

total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Thomas Costello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Kansas to have been affected adversely by this declared major disaster:

Douglas and Wyandotte Counties for Public Assistance.

All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23329 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1569–DR]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–1569–DR), dated October 7, 2004, and related determinations.

DATES: Effective October 7, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 7, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Minnesota resulting from severe storms and flooding beginning on September 14, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas; and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Thomas J. Costello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Minnesota to have been affected adversely by this declared major disaster:

Dodge, Faribault, Freeborn, Mower, and Steele Counties for Individual Assistance.

Dodge, Faribault, Freeborn, Mower, and Steele Counties for Public Assistance.

All counties within the State of Minnesota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23317 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1563–DR]

New Jersey; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–1563—DR), dated October 1, 2004, and related determinations.

DATES: Effective October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 1, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New Jersey, resulting from Tropical Depression Ivan beginning on September 18, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds

available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Peter J. Martinasco, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Jersey to have been affected adversely by this declared major disaster:

Hunterdon, Mercer, Sussex, and Warren Counties for Individual Assistance.

Mercer, Sussex, and Warren Counties for Public Assistance.

Hunterdon, Mercer, Sussex, and Warren Counties within the State of New Jersey are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23330 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1564–DR]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1564–DR), dated October 1, 2004, and related determinations.

DATES: Effective October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 1, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New York resulting from severe storms and flooding on August 29–September 16, 2004, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas; Hazard Mitigation throughout the State; and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Theodore A. Monette, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster:

Allegany, Broome, Columbia, Delaware, Monroe, Onondaga, Steuben, Sullivan, Ulster, and Warren Counties for Public Assistance.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23331 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1565–DR]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1565–DR), dated October 1, 2004, and related determinations.

DATE: Effective October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 1, 2004, the President declared

a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New York, resulting from Tropical Depression Ivan on September 16–24, 2004, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas; Hazard Mitigation throughout the State; and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Theodore A. Monette, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster:

Broome, Chenango, Delaware, Orange, Sullivan, and Ulster Counties for Individual Assistance.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23332 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1546–DR]

North Carolina; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–1546–DR), dated September 10, 2004, and related determinations.

DATES: Effective October 8, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 10, 2004:

Macon County for Public Assistance.

Henderson and Jackson Counties for Public Assistance [Categories C through G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B] at 100 percent Federal funding of the total eligible costs for the first 72 hours).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23322 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1553–DR]

North Carolina; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–1553–DR), dated September 18, 2004, and related determinations.

DATES: Effective October 8, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 2004:

Ashe and Swain Counties for Public Assistance (already designated for Individual Assistance.)

Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Transylvania, Watauga, and Yancey Counties for Public Assistance [Categories C through G] (already designated for Individual Assistance and Public Assistance [Categories A and B], including direct Federal assistance, at 100 percent for the total eligible costs for a period of up to 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management

Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23324 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1538–DR]

Pennsylvania; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania (FEMA–1538–DR), dated August 6, 2004, and related determinations.

DATES: Effective October 8, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is now July 27, 2004, through and including August 25, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23310 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1557–DR]

Pennsylvania; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania (FEMA–1557–DR), dated September 19, 2004, and related determinations.

DATES: Effective Date: October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 1, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23325 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1557–DR]

Pennsylvania; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–1557–DR), dated September 19, 2004, and related determinations.

DATES: Effective October 8, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 19, 2004:

Chester, Crawford, Delaware, Lawrence, Montgomery, Philadelphia, Somerset, and Sullivan Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23326 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1566–DR]

South Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–1566–DR), dated October 7, 2004, and related determinations.

DATES: Effective October 7, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 7, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of South Carolina, resulting from Tropical Storm Frances, beginning on September 6, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of South Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas; Hazard Mitigation throughout the State; and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael Bolch, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Carolina to have been affected adversely by this declared major disaster:

Calhoun, Cherokee, Chester, Chesterfield, Clarendon, Darlington, Dillon, Fairfield, Florence, Greenville, Horry, Kershaw, Lancaster, Lee, Lexington, Marion, Marlboro, Newberry, Oconee, Pickens, Richland, Spartanburg, Sumter, Williamsburg, and York Counties for Individual Assistance.

All counties within the State of South Carolina are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23315 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1568–DR]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1568–DR), dated October 7, 2004, and related determinations.

DATES: Effective October 7, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 7, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Tennessee, resulting from severe storms and flooding on September 16–20, 2004, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas; and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Carlos Mitchell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster:

Campbell, Carter, Clay, Cocke, Cumberland, Grundy, Hamilton, Jackson, Johnson, Meigs, Polk, Rhea, and Roane Counties for Public Assistance.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23333 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1567–DR]

Virgin Islands; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Territory of the U.S. Virgin Islands (FEMA–1567–DR), dated October 7, 2004, and related determinations.

DATES: Effective October 7, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 7, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Territory of the U.S. Virgin Islands, resulting from Tropical Storm Jeanne on September 14–17, 2004, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the Territory of the U.S. Virgin Islands.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas; and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. You are authorized to make adjustments as warranted to the non-Federal cost shares as provided under the Insular Areas Act, 48 U.S.C. 1469a(d)

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Peter J. Martinasco, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following islands of the Territory of the U.S. Virgin Islands to have been affected adversely by this declared major disaster:

The islands of St. Croix, St. John, and St. Thomas for Public Assistance.

The islands of St. Croix, St. John, and St. Thomas in the Territory of the U.S. Virgin Islands are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23316 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1558–DR]

West Virginia; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1558–DR), dated September 20, 2004, and related determinations.

DATES: Effective October 8, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 20, 2004:

Boone County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23327 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1526–DR]

Wisconsin; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1526–DR), dated June 18, 2004, and related determinations.

DATES: Effective October 8, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is now May 7, 2004, through and including July 3, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services

Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23309 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Notice of Adjustment of Disaster Grant Amounts

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: FEMA gives notice of an increase of the maximum amount for Small Project Grants to State and local governments and private nonprofit facilities for disasters declared on or after October 1, 2004.

DATES: Effective October 1, 2004 and applies to major disasters declared on or after October 1, 2004.

FOR FURTHER INFORMATION CONTACT: James A. Walke, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act) prescribes that FEMA must annually adjust the maximum grant amount made under section 422, Small Project Grants, Simplified Procedure, relating to the Public Assistance program, to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice of an increase of the maximum amount of any Small Project Grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under section 422 of the Stafford Act, to $55,500 for all disasters declared on or after October 1, 2004.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 2.7 percent for the 12-month period ended in August 2004. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 16, 2004.

(Catalog of Federal Domestic Assistance No. 97.036, Public Assistance Grants)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23319 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Notice of Maximum Amount of Assistance Under the Individuals and Households Program, Notice of Maximum Amount of Repair Assistance, and Notice of Maximum Amount of Replacement Assistance

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: FEMA gives notice of the maximum amounts for assistance under the Individuals and Households Program for emergencies and major disasters declared on or after October 1, 2004.

DATES: Effective October 1, 2004 and applies to major disasters declared on or after October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Berl Jones, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–4235.

SUPPLEMENTARY INFORMATION: Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the ''Act''), 42 U.S.C. 5174, prescribes that FEMA must annually announce the maximum amounts for assistance provided under the Individuals and Households (IHP) Program. FEMA gives notice that the maximum amount of IHP financial assistance provided to an individual or household under section 408 of the Act with respect to any single emergency or major disaster is $26,200. The maximum amount of Repair Assistance is $5,200, and the maximum amount of Replacement Assistance is $10,500. The increases in award amounts as stated above are for any single emergency or major disaster declared on or after October 1, 2004.

FEMA bases the adjustments on an increase in the Consumer Price Index for All Urban Consumers of 2.7 percent for the 12-month period ended in August 2004. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 16, 2004.

(Catalog of Federal Domestic Assistance No. 97.048, Individuals and Households—Housing; 97.049 Individuals and Households—Disaster Housing Operations; 97.050, Individuals and Households—Other Needs)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23321 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Notice of Adjustment of Statewide Per Capita Impact Indicator

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: FEMA gives notice that the statewide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2004 will be increased.

DATES: Effective October 1, 2004 and applies to major disasters declared on or after October 1, 2004.

FOR FURTHER INFORMATION CONTACT: James A. Walke, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, and (202) 646–3834.

SUPPLEMENTARY INFORMATION: 44 CFR 206.48 provides that FEMA will adjust the statewide per capita impact indicator under the Public Assistance program to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice that the statewide per capita impact indicator will be increased to $1.14 for all disasters declared on or after October 1, 2004.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 2.7 percent for the 12-month period ended in August 2004. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 16, 2004.

(Catalog of Federal Domestic Assistance No. 97.036, Public Assistance Grants)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23318 Filed 10–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

National Communications System

National Security Telecommunications Advisory Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of open meeting.

SUMMARY: A meeting of the President's National Security Telecommunications Advisory Committee (NSTAC) will be held via conference call on Thursday, October 21, 2004, from 3 p.m. to 4 p.m. The NSTAC is subject to the Federal Advisory Committee Act (FACA), Pub. L. 92–463, as amended (5 U.S.C. App. II). The conference call will be opened to the public. The purpose of the meeting is to receive a briefing on:

• Homeland Security Presidential Directive 7 (HSPD7). While the call is opened to the public, the public and other non-NSTAC members will be placed on listen only (muted) lines. For access to the conference bridge and meeting materials, please register with Ms. Daniela Christopherson at (703) 607–6217 or by e-mail at *Christod@ncs.gov* by 5 p.m., Wednesday, October 20, 2004.

FOR FURTHER INFORMATION CONTACT: Call Ms. Kiesha Gebreyes, Chief, Industry Operations Branch at (703) 607–6134, or write the Manager, National Communications System, P.O. Box 4502, Arlington, Virginia 22204–4502.

Peter M. Fonash,

Federal Register Certifying Officer, National Communications System.

[FR Doc. 04–23424 Filed 10–15–04; 10:42 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

RIN 1652–ZA01

Security Requirements for Aircraft Operators Certificated Pursuant to 14 CFR Part 125

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA is providing notice that, pursuant to its authority under 49 Code of Federal Regulation (CFR) part 1550, we are requiring aircraft operators using aircraft with a maximum certificated takeoff weight (MTOW) over 12,500 pounds, that are certificated by the Federal Aviation Administration (FAA) under 14 CFR part 125 and that are not currently operating under a TSA security program, to meet the requirements of 49 CFR 1544.101(e) or (f) as specified in this notice. TSA has issued this requirement to respond to vulnerabilities in aviation security.

DATES: Effective November 18, 2004.

FOR FURTHER INFORMATION CONTACT: David Bernier, TSA–7, Director of Air Carrier Inspections, Aviation Regulation and Inspection Division, Office of Aviation Operations, Transportation Security Administration HQ, 11th Floor, East Building, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–2200; facsimile (703) 603–0414; e-mail *aircarrierinspection@tsa.dot.gov.*

SUPPLEMENTARY INFORMATION: All aircraft operators that are not otherwise regulated under title 49 CFR and that are certificated by the FAA under 14 CFR part 125 must comply with the security requirements contained in § 1544.101 (e) or (f) of title 49 as explained below. TSA is issuing this notice pursuant to 49 CFR 1550.7 in response to vulnerabilities in civil aviation security.

The U.S. Intelligence Community continues to receive and evaluate a high volume of reporting indicating possible threats against U.S. interests. This reporting, combined with recent terrorist attacks, has created an atmosphere of concern. While the ability to conduct multiple, near simultaneous attacks against several targets is not new for such terrorist groups as al-Qa'ida, aircraft that are not required to comply with TSA's security regulations provide an attractive target for terrorist organizations attempting to evade aviation security measures currently in place. The Department of Homeland Security remains concerned about al-Qa'ida's continued interest in aviation to carry out attacks on transportation and supporting infrastructure. In recognition of the current threat environment, TSA has made a determination that these circumstances require immediate action to ensure safety in air transportation.

Under 49 CFR 1550.7, each aircraft operation that is certificated by the FAA under part 125 and does not currently comply with a security program under 49 CFR part 1544 in an aircraft with a MTOW of more than 12,500 pounds, must conduct a search of the aircraft before departure and screen passengers, crew members and other persons, and all accessible property before boarding in accordance with security standards and procedures approved by TSA. TSA will require that for all-cargo operations conducted in an aircraft with a MTOW of more than 12,500 pounds and passenger operations conducted in an aircraft with a MTOW of more than 12,500 pounds and up to and including 45,500 kg (100,309.3 pounds), which are not currently operating under a TSA security program, such procedures and requirements as contained in 49 CFR 1544.101(e) and related security directives must be implemented. The requirements include, without limitation, a security program that provides for the security of persons and property traveling on flights, designation of an Aircraft Operator Security Coordinator, verification of the identity of flight crew members, security training, and procedures to respond to certain threats.

TSA will require that for all passenger operations with a MTOW greater than 45,500 kg (100,309.3 pounds) or with a passenger seating configuration of 61 or more, the security procedures must include the requirements listed in 49 CFR 1544.101(f) and related security directives. In addition to the requirements listed above, these operations must also screen individuals and their accessible property and provide for the use of metal detection devices and x-ray systems.

The size of the aircraft operating under part 125 certification, the number of passengers traveling on such aircraft, and the amount of cargo transported pose a significant threat to aviation security and require the application of security measures to these operations. Of particular concern to aviation security are part 125 operators that are functioning as private travel clubs. Such clubs, which are advertised on the Internet, solicit members who, after payment of initiation and membership fees, are able to purchase tour packages.

These clubs transport members and their baggage all over the world without the security measures required by TSA. Given this period of heightened security concern, it is critical that such operations are in compliance with TSA's security procedures and requirements.

TSA will assist any aircraft operator affected by this notice. The specific security programs and related security directives may be obtained by contacting David Bernier at the Transportation Security Administration: e-mail *aircarrierinspection@tsa.dot.gov,* telephone (571) 227–2200, or facsimile (703) 603–0414. Affected aircraft operators should notify TSA of any questions or issues regarding the implementation of these requirements as soon as practicable.

Issued in Arlington, Virginia, on October 12, 2004.

David M. Stone,

Assistant Secretary.

[FR Doc. 04–23390 Filed 10–18–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4848–N–03]

Homeless Management Information Systems (HMIS) Data and Technical Standards Final Notice; Clarification and Additional Guidance on Special Provisions for Domestic Violence Provider Shelters

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice clarifies and provides further guidance on the special provisions for domestic violence provider shelters participating in Homeless Management Information Systems (HMIS). This clarification and additional guidance follows issuance of the HMIS Data and Technical Standards Final Notice published on July 30, 2004, and the HMIS Data and Technical Standards Draft Notice, published on July 22, 2003.

DATES: *Effective Date:* August 30, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Roanhouse, Office of Special Needs Assistance Programs, Office of the Assistant Secretary for Community Planning and Development, Room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone (202) 708–1226, ext. 4482 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Introduction

This notice provides clarification and further guidance on the special provisions for domestic violence provider shelters (section 1.5.6.) in the Homeless Management Information Systems (HMIS) Data and Technical Standards Final Notice (Final Notice), published on July 30, 2004 (69 FR 45888). This notice provides clarification and additional guidance on the timing of participation and data collection, submission, and aggregation requirements for HUD McKinney-Vento funded domestic violence shelters.

II. Background

HUD supported the development of local HMISs in response to Congressional direction [1] on the need for improved data on and the analysis of the extent of homelessness and the effectiveness of the McKinney-Vento Act programs including: (1) Production of an unduplicated count of clients served at the local level; (2) analysis of patterns of use of people entering and exiting the homeless assistance system; and (3) evaluation of the effectiveness of the homeless assistance system. Broad-based participation of all homeless service providers at the local level in HMIS and the collection of longitudinal data are critical to meeting this directive.

Domestic violence programs play a critical role in many Continuums of Care (CoC) and constitute a large proportion of shelter beds and homeless service slots. Their absence from participation in an HMIS would prevent these communities from obtaining an unduplicated count of homeless persons in their community or understanding adequately the needs of the homeless population, including victims of domestic violence. In deciding whether domestic violence programs should be expected to participate in HMIS, HUD reviewed carefully the comments on the HMIS Data and Technical Standards Draft Notice, published on July 22, 2003 (68 FR 43430), and consulted with a wide range of stakeholders.

These stakeholders included local homeless assistance providers, domestic violence providers, national HMIS experts, national advocacy organizations, leading researchers and other federal agencies. Comments on the draft notice and subsequent stakeholder discussions led HUD to conclude that it was critical for domestic violence programs to participate in HMIS so as to fully understand homelessness at the local and national levels. It was also determined that safety concerns for domestic violence programs could be addressed effectively if:

- A distinction is made between (1) data that domestic violence providers collect from homeless persons and (2) data that domestic violence providers submit to a central server in order to produce an unduplicated count of homeless persons at the CoC level;
- Domestic violence programs are given ample time to implement technological, administrative, and other safeguards to participate in their community's HMIS;
- Adequate local privacy and security standards are developed to protect client information; and
- HUD offers extensive technical assistance support to communities and domestic violence programs.

To address the specific concerns regarding participation, HUD is providing the following clarification and additional guidance on the timing of participation and data collection, submission, and aggregation requirements for HUD McKinney-Vento funded domestic violence shelters.

III. The Timing of Domestic Violence Shelter Provider Participation in HMIS

HUD recognizes that communities and domestic violence programs need time to develop and implement methods to effectively address domestic violence provider participation in HMIS and, therefore, permits CoCs to stage the entry of domestic violence programs last, including after the October 2004, goal for HMIS implementation. The later staging of domestic violence providers will not affect HUD's assessment of CoC progress in HMIS implementation in the national CoC competitive ranking process.

HUD did not state a deadline for domestic violence provider participation in the HMIS and recommended the staging of their addition to the HMIS implementation last to allow for adequate time for planning, discussion, investigation, and development of local participation policies. HUD acknowledges the privacy and security concerns of domestic violence providers and has given discretion to each CoC to work with their domestic violence providers to identify methods of participation that will maximize the safety of persons served by those providers. The Final

[1] Conference Report (H.R. Report 106–988) for the Fiscal Year (FY) 2001 HUD Appropriations Act (Pub. L. 106–377).

Notice also recognizes stronger state confidentiality provisions. In the event that state laws conflict with the Final Notice, as determined by an appropriate state government entity, state law will prevail (see Section 4 of the Final Notice).

IV. Data Collection Versus Data Submission Requirements of Domestic Violence Providers to a COC

The Final Notice states that domestic violence programs that receive HUD McKinney-Vento funds are expected to implement the universal and those program-specific data elements required for generation of an Annual Progress Report and Emergency Shelter Grant reporting (see section Sections 1.5.3. and 1.5.6. of the Final Notice). To clarify and provide additional guidance concerning the implementation, the following elaborates on the requirements for data collection, data submission, and data aggregation for domestic violence providers participating in HMIS.

Data Collection: All recipients of McKinney-Vento funds collect client-specific information at the program level to meet aggregate reporting requirements for the Annual Progress Report. This includes the following programs: Supportive Housing, Shelter Plus Care, Section 8 Moderate Rehabilitation Single Room Occupancy, and Emergency Shelter Grants. Accordingly, domestic violence programs that receive McKinney-Vento funds must collect the universal and program-specific data elements required for reporting. HUD does not require domestic violence providers to collect or report an address for a client served by a domestic violence provider.

Data Submission: HUD understands the concerns regarding submission of client-identified data from domestic violence programs to a central location. HUD will not require the submission of personal identifiers (name and Social Security Number (SSN)) from these programs to the CoC. Domestic violence programs can choose to use a proxy, coded, encrypted, or hashed unique identifier—in lieu of name and SSN—that is appended to the full service record of each client served and submitted to the central server at least once annually for purposes of unduplication and data analysis. The coded unique identifier would need to include, but is not limited to, characters and digits from a portion of a client's name, date of birth, and gender. This unique identifier can be generated either manually or through the use of an advanced technological encryption algorithm. Programs participating in HMIS are not required to share client data with any other organization besides the central coordinating entity identified by the CoC as described below.

Data Aggregation: CoCs should decide how they will use coded unique identifiers in consultation with their domestic violence programs and determine how to produce an unduplicated count of homeless clients at the CoC level using these coded identifiers. CoCs must have or designate a coordinating body responsible for collection and storage of data to a central location at least once a year (see Section 5.2.1. of the Final Notice). HUD fully supports alternative methods of participation by domestic violence providers. Domestic violence programs are charged to meet with CoC representatives to identify administrative solutions, such as delaying entry of data into the HMIS until after the client has exited the domestic violence program, or other technological or administrative solutions that adequately protect data and allow for an accurate unduplicated count of homeless persons and analysis of homeless data throughout the CoC to meet the goals of the congressional directive.

V. HMIS Privacy and Security Provisions

HUD recognizes that the privacy and security concerns of domestic violence victims are unlike those of other homeless clients. In response to these concerns, HUD has developed HMIS privacy and security standards that are improvements to current practices, set high baseline standards for all users of HMIS data, and adequately protect personal information collected from domestic violence victims as well as all homeless clients.

As stated in the Final Notice, the baseline privacy and security standards are based on principles of fair information practice and on security standards recognized by the information technology and privacy communities. The privacy standards were developed after careful review of the Health Insurance Portability and Accountability Act (HIPAA) standards for protecting patient information. The HIPAA privacy rule establishes a national baseline of privacy standards for most health information. For some key provisions in the HMIS privacy standards, HUD set baseline standards that exceeded those in HIPAA, especially for provisions that are important to domestic violence programs.

HUD also developed multi-layered security provisions that meet or surpass current Information Technology (IT) industry standards requiring: (1) User authentication; (2) industry standard encryption (128-bit Secure Socket Layer) of all HMIS data that are electronically transmitted over the Internet, publicly accessible networks, or phone lines; and (3) strict limitations to physical and network access to systems with HMIS data. In addition to these baseline standards, HUD recommends additional privacy and security standards that CoCs and programs could implement to further increase the security of the system. The baseline privacy and security standards for HMIS required by the Final Notice far exceed the requirements for many other systems into which these client data are entered. HUD continues to encourage organizations to apply these additional protections as they deem appropriate.

VI. Providing Technical Assistance to Communities and Domestic Violence Programs

HUD recognizes that the development of an HMIS with adequate technological and/or administrative solutions to protect client data can be challenging. HUD will continue to provide technical assistance to local CoCs to help them develop solutions that meet the needs of domestic violence victims and the programs that serve this population.

Research is currently underway to document successful methods of participation of domestic violence providers in existing HMIS implementations. Some of these methods use coded unique client identifiers that do not require providers to submit name, SSN, or other identifying information to the central server, but do allow for an unduplicated count at the CoC level. Other methods currently in use include delayed entry of data into the HMIS until after the client has exited the program or HMIS system administration/hosting by the domestic violence provider agency. Information about the specific methods will be posted on HUD's HMIS page and also distributed via the *hmisinfo@hud.gov* list-serve.

VII. Summary

HUD will exempt domestic violence providers from submission of client identifiers (name and SSN) to the CoC for unduplication and data analysis. Those programs electing this exemption are required to use either a proxy, coded, encrypted, or hashed unique identifier—in lieu of name and SSN—that is appended to the full service

record of each client served and submitted to the CoC central server at least once annually for purposes of unduplication and data analysis. Domestic violence providers may also choose to adopt a delayed data entry protocol whereby client records are not entered into the HMIS system until a set period of time after exit.

CoC representatives are instructed to meet with domestic violence providers to develop and implement a method by which the CoC can unduplicate data across all providers in the HMIS. HUD fully supports alternative methods of participation by domestic violence providers including those that incorporate technological or administrative solutions that adequately protect data and allow for an accurate unduplicated local count of homeless persons and analysis of homeless data to meet the goals of the Congressional directive.

Dated: October 14, 2004.

Patricia A. Carlile,

Deputy Assistant Secretary for Special Needs Assistance.

[FR Doc. 04–23438 Filed 10–15–04; 12:08 pm]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–05–1420–BJ]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

Indian Meridian, Oklahoma

The Plat representing the dependent resurvey and survey in Township 10 North, Range 26 East, of the Arkansas River and Historic Riverbed, accepted September 28, 2004, for Group 61 Oklahoma.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the New Mexico State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: October 7, 2004.

Jay Innes,

Acting Chief Cadastral Surveyor for New Mexico.

[FR Doc. 04–23364 Filed 10–18–04; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP05–0001]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands were officially filed in the Oregon State Office, Portland, Oregon, on August 11, 2004.

Willamette Meridian

Oregon

T. 29 S., R. 8 W., accepted May 20, 2004
T. 32½ S., R. 33 E., accepted May 20, 2004
T. 33 S., R. 33 E., accepted May 20, 2004
T. 37 S., R. 2 E., accepted May 20, 2004
T. 39 S., R. 13 W., accepted May 20, 2004
T. 15 S., R. 8 W., accepted May 28, 2004
T. 22 S., R. 10 E., accepted May 28, 2004
T. 7 S., R. 3 E., accepted June 8, 2004
T. 9 S., R. 3 E., accepted June 8, 2004
T. 12 S., R. 2 E., accepted June 8, 2004
T. 15 S., R. 7 W., accepted June 8, 2004
T. 22 S., R. 4 W., accepted June 8, 2004
T. 1 N., R. 34 E., accepted June 24, 2004
T. 23 S., R. 3 W., accepted June 24, 2004
T. 23 S., R. 4 W., accepted June 24, 2004
T. 25 S., R. 2 W., accepted June 24, 2004
T. 27 S., R. 11 W., accepted June 24, 2004
T. 33 S., R. 5 W., accepted June 24, 2004
T. 38 S., R. 4 W., accepted June 24, 2004

Washington

T. 31 N., R. 1 E., accepted May 20, 2004
T. 23 N., R. 11 W., accepted July 13, 2004

The plat of survey of the following described lands is scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Oregon

T. 16 S., R. 16 E., accepted September 7, 2004
T. 17 S., R. 16 E., accepted September 7, 2004

A copy of the plats may be obtained from the Public Room at the Oregon State Office, Bureau of Land Management, 333 S.W. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Sciences, Bureau of Land Management, (333 SW. 1st Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: October 7, 2004.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 04–23380 Filed 10–18–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB control number 1010–0107).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. We changed the title of this information collection request (ICR) to clarify the regulatory language we are covering under 30 CFR part 218. The previous title of this ICR was ''30 CFR part 218, subpart B—Oil and Gas, General.'' The new title of this ICR is ''30 CFR part 218, subpart A—General Provisions, § 218.42 Cross-lease netting in calculation of late-payment interest; subpart B—Oil and Gas, General, § 218.52 How does a lessee designate a Designee? (Form MMS–4425, Designation Form for Royalty Payment Responsibility) and § 218.53

Recoupment of overpayments on Indian mineral leases; and subpart E—Solid Minerals—General, § 218.203 Recoupment of overpayments on Indian mineral leases.''

DATES: Submit written comments on or before December 20, 2004.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, or e-mail *Sharron.Gebhardt@mms.gov.*

SUPPLEMENTARY INFORMATION: *Title:* 30 CFR part 218, subpart A—General Provisions, § 218.42 Cross-lease netting in calculation of late-payment interest; subpart B—Oil and Gas, General, § 218.52 How does a lessee designate a Designee? (Form MMS–4425, Designation Form for Royalty Payment Responsibility) and § 218.53 Recoupment of overpayments on Indian mineral leases; and subpart E—Solid Minerals—General, § 218.203 Recoupment of overpayments on Indian mineral leases.

OMB Control Number: 1010–0107.

Bureau Form Number: Form MMS–4425.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out the Department's Indian trust responsibility.

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure that the royalties are paid appropriately.

This ICR includes unique reporting circumstances including designation of designee, cross-lease netting in calculation of late-payment interest, and tribal permission for recoupment on Indian leases.

Applicable Public Laws

Applicable citations of the laws pertaining to mineral leases include Public Law 97–451—Jan. 12, 1983 (Federal Oil and Gas Royalty Management Act of 1982 [FOGRMA]), Public Law 104–185—Aug. 13, 1996 (Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 [RFSA]) as corrected by Public Law 104–200—Sept. 22, 1996), and the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*). Public laws pertaining to mineral royalties are located on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.*

Designation of Designee

The RSFA established that owners of, primarily, operating rights or, secondarily, lease record title (both referred to as ''lessees'') are responsible for making royalty and related payments on Federal oil and gas leases. These RSFA requirements were promulgated in regulations at 30 CFR 218.52. It is common, however, for a payor rather than a lessee to make these payments. When a payor makes payments on behalf of a lessee, RSFA section 6(g) requires that the lessee designate the payor as its designee and notify MMS of this arrangement in writing. The MMS designed Form MMS–4425, Designation Form for Royalty Payment Responsibility, to request all the information necessary for lessees to comply with these RSFA requirements when they choose to designate an agent to pay for them. The MMS requires this information to ensure proper mineral revenue collection.

Cross-Lease Netting in Calculation of Late-Payment Interest

Regulations at 30 CFR 218.54 require MMS to assess interest on unpaid or underpaid amounts. The MMS distributes these interest revenues to states, Indians, and the U.S. Treasury, based on financial lease distribution information. Current regulations at 30 CFR 218.42 provide that an overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine the net payment subject to interest, when certain conditions are met. This is called cross-lease netting.

However, RSFA sections 6(a), (b), and (c) require MMS to pay interest on lessees' Federal oil and gas overpayments made on or after the February 13, 1997, enactment of RSFA. The MMS implemented this RSFA provision in 1997, and began calculating interest on both underpayments and overpayments for Federal oil and gas leases, making the cross-lease netting provisions at 30 CFR 218.42 no longer applicable for these leases. The MMS is currently developing regulations to amend 30 CFR 218.42 to limit its applicability to payments made under Indian tribal leases and Federal leases for minerals other than oil and gas. The MMS estimates that in about 7 cases per year, lessees must comply with the provisions of 30 CFR 218.42(b) and (c) for Indian tribal leases or Federal leases other than oil and gas, demonstrating that cross-lease netting is correct by submitting production reports, pipeline allocation reports, or other similar documentary evidence. This information is necessary for MMS to determine the correct amount of interest owed by the lessee, and to ensure proper value is collected.

Tribal Permission for Recoupment on Indian Leases

In order to report cross-lease netting on Indian leases, lessees must also comply with regulations at 30 CFR 218.53(b) and 218.203(b), allowing only lessees with written permission from the tribe to recoup overpayments on one lease against a different lease for which the tribe is the lessor. The payor must furnish MMS with a copy of the tribe's written permission. Generally, a payor may recoup an overpayment against the current month's royalties or other revenues owed on the same tribal lease. For any month, a payor may not recoup more than 50 percent of the royalties or other revenues owed in that month under an individual allotted lease or

more than 100 percent of the royalties or other revenues owed in that month under a tribal lease. Lessees use Form MMS–2014, Report of Sales and Royalty Remittance, for oil and gas lease recoupments (burden covered under ICR 1010–0140, expires October 31, 2006) and Form MMS–4430, Solid Mineral Production and Royalty Report, for solid mineral lease recoupments (burden covered under ICR 1010–0120, expires October 31, 2007). The MMS requires tribal permission to ensure tribes and individual Indian mineral owners receive correct revenues from production on their leases.

Frequency: On occasion.

Estimated Number and Description of Respondents: 1,613 Federal and Indian lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 1,220 hours.

The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

Citation 30 CFR 218	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Subpart A—General Provisions—Cross-lease netting in calculation of late-payment interest.				
218.42(b) and (c)	Cross-lease netting in calculation of late-payment interest. (b) Royalties attributed to production from a lease or leases which should have been attributed to production from a different lease or leases may be offset * * * if * * * the payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information * * *. (c) If MMS assesses late-payment interest and the payor asserts that some or all of the interest assessed is not owed * * * the burden is on the payor to demonstrate that the exception applies * * *.	2	7	4
Subpart B—Oil and Gas, General—How does a lessee designate a Designee?				
218.52 (a), (c), and (d)	How does a lessee designate (a) If you are a lessee under 30 U.S.C. 1701(7), and you want to designate a person to make all or part of the payments due under a lease on your behalf * * * you must notify MMS * * * in writing of such designation * * *. (c) If you want to terminate a designation * * * you must provide [the following] to MMS in writing * * *. (d) MMS may require you to provide notice when there is a change in the percentage of your record title or operating rights ownership. **Note:** The MMS currently uses Form MMS–4425, Designation Form for Roy alty Payment Responsibility to collect this information.	0.75	1,600	1,200
Subpart B—Oil and Gas, General—Recoupment of overpayments on Indian mineral leases.				
218.53(b)	Recoupment of overpayments on Indian mineral leases. (b) With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed * * * under other leases * * *. A copy of the tribe's written permission must be furnished to MMS * * *.	1	5	5
Subpart E—Solid Minerals—General—Recoupment of overpayments on Indian mineral leases.				
218.203(b)	Recoupment of overpayments on Indian mineral leases. (b) With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed in that month under other leases for which that tribe is the lessor. A copy of the tribe's written permission must be furnished to MMS * * * [following] instructions * * *.	1	1	1
Total Burden	.....		1,613	1,220

We are revising this ICR to cover regulations at 30 CFR 218.42 (b) and (c), Cross-Lease Netting in Calculation of Late-Payment Interest and 30 CFR 218.203(b), Recoupment of Overpayments on Indian Mineral Leases. Previously addressed burden hours for 30 CFR 218.57 are currently covered in ICR 1010–0120 (expires October 31, 2007).

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified no ''non-hour cost'' burdens.

Comments: The PRA (44 U.S.C. 3501 *et seq.*) provides 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 OMB control number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is

useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. The ICR also will be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We also will make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as 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 request that we withhold your name and/or address, state your request 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.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: October 12, 2004.

Cathy J. Hamilton,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 04–23303 Filed 10–18–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0122).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. We changed the title of this information collection request (ICR) to clarify the regulatory language we are covering under 30 CFR Part 243. The previous title of this ICR was ''30 CFR Part 243 Suspensions Pending Appeal and Bonding (formerly Filing Sureties).'' The new title of this ICR is ''30 CFR Part 243, Suspensions Pending Appeal and Bonding—Minerals Revenue Management (Forms MMS–4435, Administrative Appeal Bond, and MMS–4436, Letter of Credit).''

DATES: Submit written comments on or before December 20, 2004.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, or e-mail *sharron.gebhardt@mms.gov.*

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 243, Suspensions Pending Appeal and Bonding—Minerals Revenue Management (Forms MMS–4435, Administrative Appeal Bond, and MMS–4436, Letter of Credit).

OMB Control Number: 1010–0122.

Bureau Form Number: Forms MMS–4435 and MMS–4436.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The MMS performs the royalty management functions for the Secretary.

Applicable citations of the laws pertaining to mineral leases include Public Law 97–451—Jan. 12, 1983 (Federal Oil and Gas Royalty Management Act of 1982 [FOGRMA]), Public Law 104–185—Aug. 13, 1996 (Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 [RFSA]) as corrected by Public Law 104–200—Sept. 22, 1996), and the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*). Public laws pertaining to mineral royalties are located on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.* Proprietary information submitted to MMS under the collection is protected.

Stay of Payment Pending Appeal

Lessees or recipients of MMS's Minerals Revenue Management (MRM) orders may suspend compliance with an order if they appeal in accordance with 30 CFR 290, Subpart B. Pending appeal, MMS suspends the payment requirement if the appellant submits a formal agreement of payment in case of default, such as a bond or other surety. The MMS accepts the following surety types: Form MMS–4435, Administrative Appeal Bond; Form MMS–4436, Letter

of Credit; Self-bonding; Certificate of Deposit; and U.S. Treasury Securities.

When one of the surety types is selected and put in place, appellants must maintain the surety until completion of the appeal. If the appeal is decided in favor of the appellant, MMS returns the surety to the appellant. If the appeal is decided in MMS's favor, we will take action to collect full royalty payment or draw down on the surety. The MMS draws down on a surety if the appellant fails to comply with requirements relating to amount due, time frame, or surety submission or resubmission. Whenever MMS must draw down on a surety, the total amount due is defined as unpaid principal plus interest accrued to the projected receipt date of the surety payment. The five surety types are discussed below.

Form MMS–4435, Administrative Appeal Bond

Appellants may file Form MMS–4435, Administrative Appeal Bond, which MMS uses to secure the financial interests of the public and Indian lessors during the entire administrative and judicial appeal process. The bond must be issued by a qualified surety company that is approved by the Department of the Treasury (see Department of the Treasury Circular No. 570, revised periodically in the **Federal Register**). The Associate Director for MRM (Associate Director) or the delegated bond-approving officer (officer) maintains these bonds in a secure facility. Once the appeal has concluded, MMS may release and return the bond to the appellant or collect royalty payment upon the bond. If collection is necessary for a remaining royalty payment balance, MMS will issue a demand for payment to the surety company with a notice to the appellant, including all interest accrued on the affected bill.

Form MMS–4436, Letter of Credit

Appellants may choose to file Form MMS–4436, Letter of Credit, with no modifications. The Associate Director or officer maintains the Letter of Credit (LOC) in a secure facility. A bank must notarize and issue the LOC for appellants in which the bank has a minimum Fitch rating (formerly Bankwatch) of ''C'' for an LOC of less than $1 million, ''B/C'' for an LOC between $1 million and $10 million, or ''B'' for an LOC over $10 million. The LOC must have a minimum coverage period of 1 year and be automatically renewable for up to 5 years. The appellant is responsible for verifying that the bank provides a current rating to MMS. If the issuing bank's rating falls below the minimum acceptable level, a satisfactory replacement surety must be submitted within 14 days or MMS will draw down the existing LOC. If the bank issuing the LOC chooses not to renew the existing LOC, it must provide MMS with a notice of its decision not to renew 30 days prior to expiration of the LOC. Once the appeal has been concluded, MMS may release and return the LOC to the appellant or collect royalty payment upon the LOC. If collection is necessary for a remaining royalty payment balance, MMS will issue a demand for payment, which includes all interest assessed on the affected bill, to the bank with a notice to the appellant.

Self-Bonding

For Federal oil and gas leases only, RSFA Section 4(l), as promulgated in regulations at 30 CFR 243.201, provides that no surety instrument is required when a person representing the appellant periodically demonstrates, to the satisfaction of MMS, that the guarantor or appellant is financially solvent and otherwise able to pay the obligation. Appellants must submit a written request to ''self-bond'' every time a new appeal is filed. To evaluate the financial solvency and exemption from requirements of appellants to maintain a surety related to an appeal, MMS requires appellants to submit an audited, consolidated balance sheet. In some cases, MMS also requires copies of the most recent tax returns—up to 3 years—filed by appellants.

Appellants must submit audited financial statements annually to support their net worth. The MMS uses the audited, consolidated balance sheet or business information supplied to evaluate the financial solvency of a lessee, designee, or payor seeking a stay of payment obligation pending review. If appellants do not have an audited, consolidated balance sheet documenting their net worth, or they do not meet the $300 million net worth requirement, MMS selects a business information or credit reporting service to provide information concerning an appellant's financial solvency. We charge the appellant a $50 fee each time we need to review data from a business information or credit reporting service. We need the fee to recover our costs to determine an appellant's financial solvency. The Associate Director or officer uses this information to determine the financial solvency of a lessee, designee, or payor on the basis of their net worth.

Certificate of Deposit (CD)

Appellants may choose to secure their debts by requesting to use a CD from their bank. Appellants must file the request with MMS prior to the invoice due date. The MMS will accept a book-entry CD that explicitly assigns the CD to the Associate Director. A bank must issue the CD in which the bank has a minimum Fitch rating or is confirmed by a bank with an acceptable rating. The acceptable ratings for a CD are the same as for an LOC. If collection of the CD is necessary for a royalty payment balance, MMS will return unused CD funds to the appellant after total settlement of the appealed issues including applicable interest charges.

U.S. Treasury Securities (TS)

Appellants may choose to secure their debts by requesting to use a TS. Appellants must file the request with MMS prior to the invoice due date. The MMS only accepts a book-entry TS. The TS must be a U.S. Treasury note or bond with maturity equal to or greater than 1 year. The TS must equal 120 percent of the appealed amount plus 1 year of estimated interest (necessary to protect MMS against interest rate fluctuations).

Frequency of Response: Annually and on occasion.

Estimated Number and Description of Respondents: 300 Federal/Indian lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 300 hours.

There are approximately 300 respondents (Federal/Indian lessees). Responses are annually and on occasion. The MMS estimates that there will be 200 surety instruments (135 bonds, 63 LOCs, 1 CD, and 1 TS) and 100 self-bonding submissions each year. The MMS estimates the total annual burden is 300 reporting and recordkeeping hours, based on 1 hour per response, regardless of the type of surety. Based on a cost factor of $50 per hour, we estimate the total annual cost to industry is $15,000 ($50 x 300 hours = $15,000). We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary.

The following chart shows the breakdown of the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS 1

Citation 30 CFR 243	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Subpart A—General Provisions				
243.4(a)(1)	How do I suspend compliance with an order? (a) If you timely appeal an order, and if that order or portion of that order:. (1) Requires you to make a payment, and you want to suspend compliance with that order, you must post a bond or other surety instrument or demonstrate financial solvency * * *.	1 hour	200 surety instruments (including Forms MMS-4435 and MMS-4436, CD or TS).	200
243.6	When must I or another person meet the bonding or financial solvency requirements under this part?. If you must meet the bonding or financial solvency requirements under § 243.4(a)(1), or if another person is meeting your bonding or financial solvency requirements, then either you or the other person must post a bond or other surety instrument or demonstrate financial solvency within 60 days after you receive the order or the Notice of Order..	Burden covered § 243.4(a)(1)		0
243.7(a)	What must a person do when posting a bond or other surety instrument or demonstrating financial solvency on behalf of an appellant?. If you assume an appellant's responsibility to post a bond or other surety instrument or demonstrate financial solvency * * *. (a) Must notify MMS in writing * * * that you are assuming the appellant's responsibility * * *.	Burden covered under § 243.4(a)(1).		0
243.8(a)(2) and (b)(2)	When will MMS suspend my obligation to comply with an order?. (a) Federal leases. * * *. (2) If the amount under appeal is $10,000 or more, MMS will suspend your obligation to comply with that order if you:. (i) Submit an MMS-specified surety instrument under subpart B of this part within a time period MMS prescribes; or. (ii) Demonstrate financial solvency under subpart C. (b) Indian leases. * * *. (2) If the amount under appeal is $1,000 or more, MMS will suspend your obligation to comply with that order if you submit an MMS-specified surety instrument under subpart B of this part within a time period MMS prescribes.	Burden covered § 243.4(a)(1)		0
Subpart B—Bonding Requirements				
243.101(b)	How will MMS determine the amount of my bond or other surety instrument?. * * * (b) If your appeal is not decided within 1 year from the filing date, you must increase the surety amount to cover additional estimated interest for another 1-year period. You must continue to do this annually * * *.	Burden covered under § 243.4(a)(1)		0
Subpart C—Financial Solvency Requirements				
243.200(a) and (b)	How do I demonstrate financial solvency? (a) To demonstrate financial bonding solvency under this part, you submissions must submit an audited (demonstration consolidated balance sheet, of and, if requested by the MMS financial bond-approving officer, up to 3 solvency) years of tax returns to the MMS, * * *.	1 hour	100 self-bonding submissions (demonstration of financial solvency).	100

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS 1—Continued

Citation 30 CFR 243	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	(b) You must submit an audited consolidated balance sheet annually, and, if requested, additional annual tax returns on the date MMS first determined that you demonstrated financial solvency as long as you have active appeals, or whenever MMS requests. * * *.			
243.201 (c)(1), (c)(2)(i) and (c)(2)(ii) and 243.201 (d)(2).	How will MMS determine if I am financially solvent?	Burden covered under §§ 243.4(a)(1) and 243.200(a) and (b)		0
	* * * (c) If your net worth, minus the amount we would require as surety under subpart B for all orders you have appealed is less than $300 million, you must submit * * *:. (1) A written request asking us to consult a business-information, or credit-reporting service or program to determine your financial solvency; and. (2) A nonrefundable $50 processing fee:. (i) You must pay the processing fee * * *;. (ii) You must submit the fee with your request * * * and then annually on the date we first determined that you demonstrated financial solvency, as long as you are not able to demonstrate financial solvency * * * and you have active appeals. (d) * * * (2) For us to consider you financially solvent, the business-information or credit-reporting service or program must demonstrate your degree of risk as low to moderate: * * *.			
243.202(c)	When will MMS monitor my financial solvency?	Burden covered under § 243.4(a)(1)		0
	* * * (c) If our bond-approving officer determines that you are no longer financially solvent, you must post a bond or other MMS-specified surety instrument under subpart B.			
Total Burden	.....	.....	300	300

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified a $50 fee for reviewing data from a business information or credit reporting service as a ''non-hour cost'' burden. Over the past 3 years, MMS has only collected a $50 fee from 5 lessees.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides 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 OMB control number.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have identified a $50 fee for reviewing data from a business information or credit reporting service as a ''non-hour cost'' burden for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. The ICR also will be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We also will make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we

will withhold an individual respondent's home address from the public record, as 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 request that we withhold your name and/or address, state your request 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.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: October 7, 2004.

Janice Bigelow,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 04–23304 Filed 10–18–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: national sex offender registry.

The Department of Justice (DOJ), Federal Bureau of Investigations (FBI) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 155, page 49915 on August 12, 2004, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 18, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* National Sex Offender Registry.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: none. Federal Bureau of Investigation (FBI).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, local, or tribal government. The National Sex Offender Registry data is a collection from the 50 States, 5 Territories, and the District of Columbia. The registry was established by the FBI in accordance with Federal Law (42 U.S.C. 14072) in order to track the whereabouts and movements of persons who have been convicted of a criminal offense against a victim who is a minor; persons who have been convicted of a sexually violent offense; and persons who are sexually violent predators.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated number of respondents is 56 government entities. The estimated time for the average respondent to respond: The collection of information from the sex offender is sponsored by the state government. The subsequent electronic transmission into the National Sex Offender Registry poses no additional burden on the state. The telecommunication network used for the transmission of NSOR data is an existing network, and the FBI assumes all costs.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual burden hour associated with this collection is 1 to allow OMB approval.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 13, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–23300 Filed 10–18–04; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection: Comments Requested

ACTION: 60-day notice of information collection under review; Police Public Contact Survey

The Department of Justice (DOJ), Office of Justice Programs (OJP), Bureau of Justice Statistics (BJS), has submitted the following information collection request to the Office of Management Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 20, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Matthew Durose, Bureau of Justice Statistics, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Police Public Contact Survey.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* PPCS–1. Bureau of Justice Statistics, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Eligible individuals must be age 16 or older. Other: None. The Police Public Contact Supplement fulfills the mandate set forth by the Violent Crime Control and Law Enforcement Act of 1994 to collect, evaluate, and publish data on the use of excessive force by law enforcement personnel. The survey will be conducted as a supplement to the National Crime Victimization Survey in all sample households for a six (6) month period.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* A total of approximately 116,500 persons will be eligible for the PPCS questions during July through December 2005. Of the 116,500 eligible persons, we expect approximately 82 percent or 95,900 of the eligible persons will complete a PPCS interview. Of those persons interviewed for the PPCS, we estimate approximately 80 percent or 76,720 persons will complete only the first two (contact screener questions) survey questions. The estimated time to complete the control information on the PPCS form, read the introductory statement, and administer the first two contact screener questions to the respondents is approximately 1.5 minute per person. Furthermore, we estimate that the remaining 20 percent of the interviewed persons or 19,180 persons will report contact with the police. The time to ask the detailed questions regarding the nature of the contact is estimated to take an average of 10 minutes. Respondents will be asked to respond to this survey only once during the six month period.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual burden hours associated with this collection are 5,114.

If additional information is required contact: Mrs. Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 13, 2004.

Brenda E. Dyer,

Clearance Officer, Department of Justice.

[FR Doc. 04–23299 Filed 10–18–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Clintwood Elkhorn Mining Company

[Docket No. M–2004–042–C]

Synergy Engineering Services, PLLC, 34 First Street, Foxbottom, Harold, Kentucky 41635, Permit #1201764, has filed a petition for modification for the Clintwood Elkhorn Mining Company, P.O. Box 196, Hurley, Virginia 24620, to modify the application of 30 CFR 77.214(a) (Refuse piles; general) for the Devils Branch Blair #1 Mine (MSHA I.D. No. 44–07014), and the Devils Branch Blair #2 Mine (MSHA I.D. No. 44–07032) located in Buchanan County, Virginia. The petitioner proposes to backfill two existing underground mine face-ups, Blair #1 and Blair #2, with coarse scalp rock material generated from an adjacent underground mine. The Blair #1 Mine is still active, and will be backfilled once mining is complete; the Blair #2 Mine has been mined out and abandoned. A total of four entries exist in both the Blair #1 and Blair #2 Mine, and all entries are located in the Blair coal seam at approximately 1395 feet elevation. The petitioner has listed specific procedures in this petition that would be followed to seal the mine openings. The petitioner asserts that the proposed alternative method would not diminish the level of protection provided to the miners.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via Federal eRulemaking Portal: *http://www.regulations.gov;* E-mail: *Comments@MSHA.gov;* Fax: (202) 693–9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before November 18, 2004. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 13th day of October, 2004.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 04–23352 Filed 10–18–04; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public

comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before December 3, 2004. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: *records.mgt@nara.gov.*

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Forest Service (N1–95–04–1, 7 items, 4 temporary items). Data files from the Rocky Mountain Research Station's Fire Regimes for Fuels Management and Fire Use Databases for the period 1986–2000. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are the 1999 versions of the National Fire Occurrence, Federal and State Lands Databases, and the Geographic Information System Data Layers, 2000, and the related system documentation.

2. Department of the Air Force, Agency-wide (N1–AFU–04–4, 6 items, 5 temporary items). Records relating to the disposition of remains of deceased foreign nationals, civilian employees of the agency, and family members of Air Force personnel. Included are such records as copies of death certificates, personal property inventories, instructions for the shipment of remains, and files relating to payments made for funerals and interments. Electronic copies of records created using electronic mail and word processing are also included. Recordkeeping copies of files relating to Air Force military personnel are proposed for permanent retention.

3. Department of the Army, Agency-wide (N1–AU–04–7, 4 items, 4 temporary items). Quality of information program claims records. Included are such records as requests for information corrections, replies, appellants' requests for reviews of denials, and final adjudication notices. Also included are electronic copies of documents created using electronic mail and word processing. This schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of Homeland Security, Transportation Security Administration (N1–560–04–10, 10 items, 6 temporary items). Routine correspondence, copies of Freedom of Information Act requests, background files relating to policy development, and project files accumulated by the Office of Operations Policy. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as policy statements, SOPs, and security directives.

5. Department of Housing and Urban Development, Agency-wide (N1–207–04–3, 15 items, 13 temporary items). Records relating to Department-wide grant programs including selection process records, award agreement case files, working papers, program support files, general subject and chronological correspondence files, and reference copies of policy records. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of policy files and financial award deliverables.

6. Department of Justice, Federal Bureau of Investigation (N1–65–04–6, 8 items, 8 temporary items). Technical records relating to the administration and operation of the agency's public Web site. Included are such records as server of origin logs, snapshots of the site, templates that record how information was displayed, logs of site traffic, and technical policies and standards. Electronic copies of records created using electronic mail and word processing are also included.

7. Department of Justice, Bureau of Prisons (N1–129–04–8, 7 items, 7 temporary items). Inputs, outputs, master files, and documentation associated with the agency's Millennium System, an electronic system used to support business activities of Federal Prison Industries. This system contains information concerning such matters as schedules of deliveries from suppliers, returns of rejected orders, and the creation of production orders. Electronic copies of

records created using electronic mail and word processing are also included.

8. Department of Justice, Bureau of Prisons (N1–129–04–9, 3 items, 3 temporary items). Inputs, outputs, and master files associated with an electronic system that is used for the display and evaluation of archived data generated by the Millennium System.

9. Department of Labor, Office of Inspector General (N1–174–03–3, 22 items, 14 temporary items). Records accumulated by the Inspector General, including such records as schedules of daily activities, telephone logs, routine Congressional correspondence, drafts and other transitory files used to create recordkeeping files, and electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as Congressional testimony, minutes of meetings with Congressional committees, speeches, and publications.

10. Department of Transportation, Bureau of Transportation Statistics (N1–398–04–2, 4 items, 4 temporary items). Files documenting assistance agreements with other entities, including other Federal agencies, academic institutions, and state and local governments. Records relate to grants, cooperative agreements, inter-agency agreements, and other types of program support agreements. Included are such records as documentation of significant actions and decisions, justifications, cost estimates, scope of work statements, applications, and close-out documentation for completed agreements. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium. Excluded are final products and deliverables, which are scheduled separately.

11. Department of Transportation, Bureau of Transportation Statistics (N1–398–04–7, 6 items, 5 temporary items). Records relating to articles submitted to professional and trade journals. Included are such records as working papers and background materials, manuscripts that do not relate to the agency's mission or substantive programs, and electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of final mission-related manuscripts.

12. Department of the Treasury, Financial Management Service (N1–425–04–4, 11 items, 11 temporary items). Records of the Debt Management Services Division relating to debt collection activities. Included are such records as delinquent debtor case files, notices sent to individuals and businesses concerning pending debt actions, and a database used to track inquiries about debt collection actions. Electronic copies of records created using electronic mail and word processing are also included.

13. Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances (N1–412–04–13, 3 items, 3 temporary items). Test method evaluation records, including such records as methods reports, laboratory data and original test method data submitted by companies, and non-reportable data relating to the analysis of environmental samples and food, feed, and pesticide products. Also included are electronic copies of documents created using electronic mail and word processing.

14. Tennessee Valley Authority, Fossil Power Group (N1–142–04–5, 4 items, 4 temporary items). Records relating to managing heavy equipment. Included are such records as rental and billing documents, requisitions, inventories, orders, and reports. Electronic copies of records created using electronic mail and word processing are also included.

Dated: October 13, 2004.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 04–23353 Filed 10–18–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COUNCIL ON DISABILITY

Youth Advisory Committee Meeting (Teleconference)

Time and Date: 12 noon, November 12, 2004.

Place: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

Agency: National Council on Disability (NCD).

Status: All parts of this meeting will be open to the public. Those interested in participating should contact the appropriate staff member listed below.

Agenda: Roll call, announcements, reports, new business, adjournment.

Contact Person for More Information: Geraldine Drake Hawkins, Ph.D., Program Analyst, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

Youth Advisory Committee Mission: The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: October 14, 2004.

Ethel D. Briggs,

Executive Director.

[FR Doc. 04–23777 Filed 10–18–04; 8:45 am]

BILLING CODE 6820–MA–M

NATIONAL TRANSPORTATION SAFETY BOARD

Agenda

TIME AND DATE: 9:30 a.m., Tuesday, October 26, 2004.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTERS TO BE CONSIDERED: 7439B, Aircraft Accident Report—In-Flight Separation of Vertical Stabilizer, American Airlines Flight 587, Airbus Industrie A300–605R, N14053, Belle Harbor, New York, November 12, 2001.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–63–05 by Friday, October 22, 2004.

The public may view the meeting via a live or archived Webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: October 15, 2004.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 04–23494 Filed 10–15–04; 3:07 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Fire Protection; Notice of Meeting

The ACRS Subcommittee on Fire Protection will hold a meeting on October 27, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, October 27, 2004—1:30 p.m. until 5:30 p.m.

The purpose of the meeting is to hear presentations on current rulemaking activities which would allow for the use of certain manual operator actions to satisfy the requirements of 10 CFR Part 50, Appendix R. The Subcommittee will hear presentations and hold discussions with representatives of the Office of Nuclear Reactor Regulation and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Marvin D. Sykes (telephone 301/415–8716), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 12, 2004.

John H. Flack,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. 04–23391 Filed 10–18–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of October 18, 25, November 1, 8, 15, 22, 2004.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of October 18, 2004

There are no meetings scheduled for the Week of October 18, 2004.

Week of October 25, 2004—Tentative

There are no meetings scheduled for the Week of October 25, 2004.

Week of November 1, 2004—Tentative

There are no meetings scheduled for the Week of November 1, 2004.

Week of November 8, 2004—Tentative

Monday, November 8, 2004

9 a.m.—Briefing on Plant Aging and Material Degradation—Part One (Public Meeting) (Contact: Steve Koenick, 301–415–1239)

1:30 p.m.—Briefing on Plant Aging and Material Degradation Issues—Part Two (Public Meeting) (Contact: Steve Koenick, 301–415–1239)

This meeting (both parts) will be webcast live at the Web address— *http://www.nrc.gov.*

Tuesday, November 9, 2004

9:30 a.m.—Briefing on Reactor Safety and Licensing Activities (Public Meeting) (Contact: Steve Koenick, 301–415–1239)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of November 15, 2004—Tentative

Tuesday, November 16, 2004

9:30 a.m.—Briefing on Threat Environment Assessment (Closed—Ex. 1)

Wednesday, November 17, 2004

9:30 a.m.—Discussion of Security Issues (Closed—Ex. 1)

Week of November 22, 2004—Tentative

There are no meetings scheduled for the Week of November 22, 2004.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: October 14, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–23425 Filed 10–15–04; 10:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50520; File No. SR–BSE–2004–49]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to an Extension of the Specialist Performance Evaluation Program Pilot

October 13, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 6, 2004, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to extend its Specialist Performance Evaluation Program until December 31, 2004. Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

Chapter XV—Specialists

Specialist Performance Evaluation Program

SEC. 17

(a)—(e) No change

(f) This program will expire on [September 30] *December 31,* 2004, unless further action is taken by the Exchange.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to extend its Specialist Performance Evaluation Program (''SPEP'') pilot, until December 31, 2004.

The Exchange states that, pursuant to the SPEP pilot program, it regularly evaluates the performance of its specialists by using objective measures, such as turnaround time, price improvement, depth, and added depth. Generally, any specialist who receives a deficient score in one or more measures may be required to attend a meeting with the Performance Improvement Action Committee, or the Market Performance Committee.

While the Exchange believes that the SPEP program has been a very successful and effective tool for measuring specialist performance, it also believes that modifications are necessary as a result of recent changes in the industry, particularly decimalization. The Exchange has filed a proposal with the Commission to amend its rules with respect to the SPEP program.[5] Accordingly, the Exchange is seeking to extend the pilot period of this program while its proposal to amend the SPEP program is pending with the Commission.

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)[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, brokers, or dealers, or to regulate by virtue of any authority matters not related to the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder[9] because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. 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.

The BSE has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay.[10] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the pilot program to continue with minimal interruption and will permit the Commission to continue to evaluate the proposed changes to the pilot program.[11] In addition, the Commission has determined to waive the five-day pre-filing notice. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

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–2004–49 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–2004–49. 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

[5] *See* Securities Exchange Act Release No. 50287 (August 27, 2004), 69 FR 53966 (September 3, 2004) (SR–BSE–2004–25).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] Exhibit 1 of SR–BSE–2004–49 contained certain discrepancies with Item 7 of SR–BSE–2004–49 with regard to the filing's date of effectiveness, which discrepancies have been conformed in this notice by Commission staff. Telephone conversation between John Boese, Vice President, Chief Regulatory Officer, BSE, and David Liu, Attorney, Division of Market Regulation, Commission, on October 8, 2004.

[11] *See* note 5 *supra.*

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2004–49 and should be submitted on or before November 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2714 Filed 10–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50521; File No. SR–CHX–2004–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees Applicable to Orders Sent for Execution Through the Exchange's CHXpress Functionality

October 13, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on September 28, 2004, the Chicago Stock Exchange, Inc. (''CHX'' 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 CHX. The proposed rule change has been filed by the CHX as establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) [4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule, to establish fees for orders sent for execution through its CHXpress[tm] functionality. Below is the text of the proposed rule change. Proposed new language is in *italics.*

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MEMBERSHIP DUES AND FEES

A.–E. No change to text.

F. Transaction and Order Processing Fees

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4. Transaction Fees

a.–k. No change to text.

l. CHXpress orders $.0005 per share, if sent by an order-sending firm. CHXpress orders sent to the Exchange by an order-sending firm are not subject to any other order processing fees, transaction fees, fee caps or fee reductions set forth above in Sections F(3) and F(4).

CHXpress orders entered by a CHX market maker or by a CHX floor broker on behalf of a customer shall be exempt from any CHXpress transaction fee but shall remain subject to transaction fees that are applicable to market maker or floor broker executions.

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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 CHX 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 CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is developing a new automated functionality for handling particular orders, called CHXpress. The CHXpress functionality, built into the Exchange's MAX® system, is designed to provide additional opportunities for the Exchange's members and their customers to seek and receive liquidity through automated executions of orders at the Exchange.[5]

Through this submission, the Exchange proposes to establish a transaction fee that would apply to executions of CHXpress orders. Specifically, CHXpress orders sent by the Exchange's off-floor order-sending firms through the Exchange's MAX system would be assessed a fee of $.0005 per share. CHXpress orders entered by a CHX market maker, or by CHX floor broker on behalf of a customer, would not be assessed a specific CHXpress order transaction fee, but would remain subject to the existing transaction fees (and fee reductions and caps) that are currently applicable to market maker and floor broker executions.[6] The CHXpress transaction fee would apply to eligible orders sent through the CHXpress functionality when it is rolled out later this year.

3. Statutory Basis

The CHX believes that its proposal to amend its schedule of dues, fees, and charges is consistent with Section 6(b)

[13] 17 CFR 200.30–3(a)(12).

[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] *See* Securities Exchange Act Release Nos. 34–50481 (September 30, 2004); 69 FR 60197 (October 7, 2004) (approval of File No. SR–CHX–2004–12) and 34–49567 (April 15, 2004); 69 FR 21591 (April 21, 2004) (notice of File No. SR–CHX–2004–12).

[6] Agency executions through a floor broker currently are $.0035 per share (for executions in ''dual trading system'' issues) and $.0025 per share (for executions in Nasdaq/NM securities), up to a maximum of $100 per side and subject to certain fee reductions and caps. Executions by market makers currently are set at $.0050 per share (up to a maximum of $100 per side) and also are subject to certain fee reductions and caps. According to the CHX, these fees charged to market makers are set at these higher per share rates for a variety of reasons, including the need to help defray the costs associated with the Exchange's regulatory activities with respect to its market makers and the costs associated with any license fees that the Exchange pays in connection with the trading of certain products. *See* Securities Exchange Act Release No. 34–49357 (March 3, 2004), 69 FR 11681 (March 11, 2004) (regarding the market maker transaction fees). Moreover, although specialists pay a fixed fee associated with the trading of their assigned issues, floor brokers do not currently do so; according to the Exchange, transaction fees assessed on floor broker executions help the cover the Exchange's costs of providing regulatory and technology services to its floor broker community.

of the Act [7] in general, and furthers the objectives of Section 6(b)(4) of the Act [8] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[9] and Rule 19b–4(f)(2) [10] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2004–32 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–CHX–2004–32. 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 CHX. 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–CHX–2004–32 and should be submitted on or before November 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2713 Filed 10–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50501; File No. SR–NASD–2004–138]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Performance Leveraged Upside Securities Based on the Value of the Dow Jones Euro Stoxx 50 Index

October 7, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 14, 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'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to list and trade Performance Leveraged Upside Securities SM Based (''PLUS'') on the Value of the Dow Jones Euro Stoxx 50 Index (''Notes'') issued by Morgan Stanley (''Morgan Stanley'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. 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

2. Purpose

Nasdaq proposes to list and trade PLUS, the return on which is based upon the Dow Jones Euro Stoxx 50 Index (''Index'').

Under NASD Rule 4420(f), Nasdaq may approve for listing and trading innovative securities that cannot be readily categorized under traditional listing guidelines.[3] Nasdaq proposes to list and trade notes based on the Index under NASD Rule 4420(f).

The Notes, which will be registered under Section 12 of the Act, will initially be subject to Nasdaq's listing criteria for other securities under NASD Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

(A) The issuer shall have assets in excess of $100 million and stockholders'

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[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] CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–32988 (September 29, 1993), 58 FR 52124 (October 6, 1993).

equity of at least $10 million.[4] In the case of an issuer which is unable to satisfy the income criteria set forth in Rule 4420(a)(1), Nasdaq generally will require the issuer to have the following: (i) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

(B) There must be a minimum of 400 holders of the security; provided, however, that if the instrument is traded in $1,000 denominations, there must be a minimum of 100 holders;

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units; and

(D) The aggregate market value/principal amount of the security will be at least $4 million.

In addition, Morgan Stanley satisfies the listed marketplace requirement set forth in NASD Rule 4420(f)(2).[5] Lastly, pursuant to NASD Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes.[6] In particular, Nasdaq will advise members recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The Notes will be subject to Nasdaq's continued listing criterion for other securities pursuant to NASD Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly-held units must be at least $1 million. The Notes also must have at least two registered and active market makers as required by NASD Rule 4310(c)(1). Nasdaq will also consider prohibiting the continued listing of the Notes if Morgan Stanley is not able to meet its obligations on the Notes.

The Notes are medium-term, senior non-convertible debt securities that will be issued by Morgan Stanley. The original public offering price of the Notes will be $10 per PLUS. Unlike, ordinary debt securities, the Notes will not pay interest and do not guarantee any rate of return of principal at maturity. The Notes also are not subject to redemption by Morgan Stanley or at the option of any beneficial owner before maturity.[7]

At maturity, if the value of the Index has increased, a beneficial owner will be entitled to receive a payment on the Notes based on 300% the amount of that percentage increase, subject to a maximum total payment at maturity that is expected to be between $15.85 and $16.30 per Note (the ''Maximum Payment at Maturity'').[8] Thus, the Notes provide investors the opportunity to obtain leveraged upside returns based on the Index subject to a cap that is expected to represent an appreciation of 58.5% to 63% over the original issue price of the Notes. Unlike ordinary debt securities, the Notes do not guarantee any return of principal at maturity. Therefore, if the value of the Index has declined from the time of pricing to the time of maturity, a beneficial owner will receive less, and possibly significantly less, than the original issue price of $10 per PLUS.

Any payment that a beneficial owner will be entitled to receive at maturity depends entirely on: (a) The relation of the value of the Index generally on second trading day prior to the date when the Notes are due (the ''Final Index Value''); and (b) the value of the Index on the day they are priced for initial sale to the public (the ''Initial Index Value''). If the Final Index Value is greater than the Initial Index Value, the payment at maturity per PLUS will equal the lesser of: (a) $10 plus the Leveraged Upside Payment [9] and (b) the Maximum Payment at Maturity. If the Final Index Value is less than or equal to the Initial Index Value, the payment at maturity per PLUS will equal $10 times the Index Performance Factor.[10]

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the Index. The Commission has previously approved the listing of options on, and other securities the performance of which have been linked to or based on, the Index.[11]

The Index was created and is published by STOXX Limited (''STOXX''), a joint venture founded by SWX-Swiss Exchange, Deutsche Boerse AG, and Dow Jones & Company.[12] The companies that are included in the Index are selected by STOXX and are representative of a broad market and a wide array of European industries. The Index is composed of 50 components stocks of the large-cap markets of the European and Eurozone regions.[13] The component stocks have a high degree of liquidity and represent the largest companies across all market sectors defined by the Dow Jones Global Classification Standard.'' Publication of the Index began on February 26, 1998, based on an initial value of the Index of 1,000 at December 31, 1991. The Index is currently calculated by (i) multiplying the per share price of each underlying security by the number of free-float adjusted outstanding shares (and, if the stock is not quoted in euros, then multiplied by the country currency and an exchange factor which reflects the exchange rate between the country currency and the euro); (ii) calculating the sum of all these products (the ''Index Aggregate Market Capitalization''); and (iii) dividing the Index Aggregate Market Capitalization by a divisor which represents the Index Aggregate Market Capitalization on the

[4] Morgan Stanley satisfies this listing criterion.

[5] NASD Rule 4420(f)(2) requires issuers of securities designated pursuant to this paragraph to be listed on The Nasdaq National Market or the New York Stock Exchange, Inc. (''NYSE'') or be an affiliate of a company listed on The Nasdaq National Market or the NYSE; provided, however, that the provisions of NASD Rule 4450 will be applied to sovereign issuers of ''other'' securities on a case-by-case basis.

[6] *See* NASD Rule 2310 and IM 2310–2, discussed below.

[7] The actual maturity date is September 30, 2009.

[8] The actual Maximum Payment at Maturity will be determined at the time of pricing of the Notes.

[9] The Leveraged Upside Payment is the product of (i) $10 and (ii) 300% and (iii) the Index Percent Increase (a fraction, the numerator of which is the Final Index Value minus the Initial Index Value and the denominator of which is the Initial Index Value).

[10] The Index Performance Factor is a fraction, the numerator of which is the Final Index Value and the denominator of which is the Initial Index Value.

[11] *See* Securities Exchange Act Release Nos. 49715 (May 17, 2004), 69 FR 29597 (May 24, 2004) (approving listing and trading of 97% Protected Notes Linked to the Performance of the Global Equity Basket, which included the Index); 46021 (June 3, 2002), 67 FR 39753 (June 10, 2002) (approving listing and trading of notes based on the Dow Jones EURO STOXX 50 Return Index, which is based on the Index); and 40303 (August 4, 1998), 63 FR 42892 (August 11, 1998) (approving listing and trading of BRoad InDex Guarded Equity-linked Securities linked to the value of the Index).

[12] STOXX has an advisory committee composed, in part, of securities firms. STOXX states that while its advisory committee generally advises the STOXX Supervisory Board on the composition, accuracy, transparency and methodology of the indexes in line with the current Dow Jones STOXX Index Guide, the Supervisory Board makes all decisions on the composition and accuracy of the Index and all changes to the Index methodology. STOXX advises that STOXX has implemented and maintains procedures designed to prevent the use and dissemination of material, non-public information relating to the Dow Jones Euro STOXX 50 Index. Telephone conversation between Alex Kogan, Associate General Counsel, Amex, to Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated October 6, 2004.

[13] Telephone conversation between Alex Kogan, Associate General Counsel, Amex, to Florence Harmon, Senior Special Counsel, Division, Commission, dated October 5, 2004.

base date of the Index and which can be adjusted to allow changes in the issued share capital of individual underlying securities, including the deletion and addition of stocks, the substitution of stocks, stock dividends and stock splits, to be made without distorting the Index.

The value of the Index is updated by STOXX every 15 seconds when European markets are open. The 15-second value of the Index, the list of the Index components and the current divisor can also be found can be accessed from *http://www.stoxx.com*. Real-time dissemination of the Index, adjusted for fluctuations in foreign currency trading prices after European markets close, is available through vendors such as Bloomberg. In the event, SWX-Swiss Exchange, Deutsche Boerse AG and Dow Jones & Company cease to maintain and disseminate the Index, Nasdaq will contact the Commission staff to consider prohibiting the continued trading of the Notes.[14]

As of August 30, 2004, the highest-weighted stock in the Index had the weight of approximately 7.5%; all other components had lower weights. The top five stocks in the Index had the cumulative weight of approximately 25.1%. The following stock markets are (as of August 30, 2004) the primary listing markets for the Index components: Deutsche Boerse (23.5% of the Index weight), Euronext Amsterdam (18.8%),[15] Borsa Italiana (11.1%), Euronext Paris (30.2%), the Spanish Stock Market (12.9%) and HEX Helsinki (3.5%). A number of the Index components are traded on more than one major European market. In addition, 31 of the 50 Index issuers currently have sponsored ADRs listed on the NYSE, and 9 have non-sponsored ADRs trading in the United States.

As of August 30, 2004, the average daily trading volume for a single Index component was approximately 9.63 million shares.[16] As of the same date, the market capitalization of the components ranged from approximately 105 billion euros to approximately 8 billion euros. These figures corresponded approximately to 126.8 billion U.S. dollars and 9.6 billion U.S. dollars.

The composition of the Index is reviewed annually, and changes are implemented on the third Friday in September, using market data from the end of July as the basis for the review process. Changes in the composition of the Index are made to ensure that the Index includes those companies that, within the eligible countries and within each industry sector, have the greatest market capitalization. The Index is also reviewed on an on-going basis, and changes in the composition of the Index may be necessary if there have been extraordinary events for one of the issuers of the underlying securities, *e.g.*, delisting, bankruptcy, merger or takeover. In these cases, the event is taken into account as soon as it is effective. The underlying securities may be changed at any time for any reason. Neither STOXX nor any of its founders is affiliated with Morgan Stanley and neither has participated in any way in the creation of the Notes.[17]

In calculating the Index, STOXX uses a divisor, currently equal to 512.863106, which represents the Index Aggregate Market Capitalization on the base date and which can be adjusted to allow changes in the issues share capital of individual underlying securities, including the deletion and addition of stocks, the substitution of stocks, stock dividends and stock splits, to be made without distorting the Index.[18]

Nasdaq represents that NASD's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, NASD will rely on its current surveillance procedures governing equity securities and will include additional monitoring on key pricing dates.

If manipulative activity or other types of trading activity that raise regulatory concerns are suspected and involve Index component stocks, then, in order to obtain the needed information, the NASD will rely on the Intermarket Surveillance Group (''ISG'') Agreement, to which the NASD and some of the Index component markets are parties, on the Memoranda of Understanding and similar arrangements (''MOUs'') between the Commission (or the United States) and the relevant foreign regulators or countries (the ISG Agreement and the MOUs are referred to collectively as ''Surveillance Information Sharing Arrangements''), and on information available domestically with respect to those issuers that list sponsored ADRs in the United States. At present, in excess of 90% of the capitalization of the Index is subject to the Surveillance Information Sharing Arrangements.[19]

Nasdaq will contact Commission staff regarding continued listing of the Notes if: (i) The home countries of the component securities representing more than 50% of the capitalization of the Index are not subject to Surveillance Information Sharing Arrangements with the NASD; (ii) a home country of the component securities representing more than 20% of the capitalization of the Index is not subject to Surveillance Information Sharing Arrangements; and (iii) two home countries of component securities representing more than 33⅓% of the capitalization of the Index are not subject to the Surveillance Information Sharing Arrangements with the NASD.[20]

Since the Notes will be deemed equity securities for the purpose of NASD Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. Pursuant to NASD Rule 2310 and IM–2310–2, members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.[21] In addition, as previously described, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and

[14] Telephone conference between Alex Kogan, Associate General Counsel, Nasdaq, and Florence Harmon, Senior Special Counsel, Division, dated October 4, 2004.

[15] One of the component stocks with a primary listing in Amsterdam maintains a second ''primary listing'' on Euronext Brussels. This component comprises approximately 1.6% of the total Index weight.

[16] This figure represents the average of the average number of shares of each Index component traded for the past 30 trading days. It is calculated by taking the sum of the volumes of the individual Index components for the past 30 trading days, dividing it by the total number of components (50), and then dividing the result by 30.

[17] Telephone conversation between Alex Kogan, Associate General Counsel, Amex, to Florence Harmon, Senior Special Counsel, Division, Commission, dated October 6, 2004.

[18] Telephone conference between Alex Kogan, Associate General Counsel, Nasdaq, and Florence Harmon, Senior Special Counsel, Division, dated October 4, 2004.

[19] Nasdaq represents that there is only one foreign stock exchange, HEX Helsinki, currently represented in the Index that is not subject either to the ISG Agreement with the NASD or to an MOU with the Commission. There is one Index stock that is currently listed on that exchange. This stock, Nokia, represents approximately 4 percent of the weight of the Index, and has a sponsored ADR listed on the NYSE. Telephone conference between Alex Kogan, Associate General Counsel, Nasdaq, and Florence Harmon, Senior Special Counsel, Division, dated October 5, 2004.

[20] *Cf.* Securities Exchange Act Release No. 34–46021 (June 3, 2002), 67 FR 39753 (June 10, 2002) (approving the listing and trading of notes based on the Select European 50 Index with similar statement regarding surveillance obligations).

[21] Prior to the execution of a transaction in the Notes that has been recommended to a non-institutional customer, NASD Rule 2310(b) requires a member to make reasonable efforts to obtain information concerning a customer's financial status, a customer's tax status, the customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. Furthermore, the Notes will be subject to the equity margin rules. Lastly, the regular equity trading hours of 9:30 am to 4 pm will apply to transactions in the Notes.

Pursuant to Rule 10A–3 of the Act [22] and Section 3 of the Sarbanes-Oxley Act of 2002,[23] Nasdaq will prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements set forth therein.

Morgan Stanley will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as Morgan Stanley's current procedure involving primary offerings.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[24] in general, and with Section 15A(b)(6) of the Act,[25] in particular, in that the proposal 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, in general, to protect investors and the public interest. Specifically, the proposed rule change will provide investors with another investment vehicle based on the Index.

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.

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–NASD–2004–138 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–2004–138. 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 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–2004–138 and should be submitted on or before November 8, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Nasdaq requests that the Commission approve this filing on an accelerated basis since it raises no new or novel issues and will enable Nasdaq to accommodate the timetable of listing the Notes. In this regard, Nasdaq notes, and the Commission concurs, that the Commission has previously approved the listing of options on, and/or securities the based on the Index.[26] The Commission has also previously approved the listing of securities with a structure that is the same or substantially the same as that of the Notes.

After careful consideration, the Commission finds that the proposed rule change, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities association, and, in particular, with the requirements of Section 15A(b)(6) of the Act [27] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[28] The Commission believes that the Notes will provide investors with a means of participating in the market for foreign securities.

The Notes are a medium-term, senior non-convertible debt securities whose price will be based on the value of the Index. In particular, the Commission believes that the Notes provide investors the opportunity to obtain upside leveraged returns based on the Index subject to a cap that is expected to represent an appreciation of 58.5% to 63% over the original issue price of the Notes. Unlike ordinary debt securities, the Notes do not pay interest or guarantee any return of principal at maturity. If the value of the Index has declined from the time of pricing to the time of maturity, a beneficial owner will receive less, and possibly significantly less, than the original issue price of $10 per PLUS. The Commission notes that the return of the Notes, if the Index declines, is not leveraged.

At maturity, if the value of the Index has increased, a beneficial owner will be entitled to receive a payment on the Notes based on 300% the amount of that percentage increase, subject to the Maximum Total Payment at Maturity, which is expected to be between $15.85 and $16.30 per Note. Any payment that a beneficial owner will be entitled to receive at maturity depends entirely on

[22] 17 CFR 240.10A–3.

[23] Pub. L. 107–204, 116 Stat. 745 (2002).

[24] 15 U.S.C. 78*o*–3.

[25] 15 U.S.C. 78*o*–3(6).

[26] *See* Securities Exchange Act Release Nos. 49715 (May 17, 2004), 69 FR 29597 (May 24, 2004) (approving listing and trading of 97% Protected Notes Linked to the Performance of the Global Equity Basket, which included the Index); 46021 (June 3, 2002), 67 FR 39753 (June 10, 2002) (approving listing and trading of notes based on the Dow Jones EURO STOXX 50 Return Index, which is based on the Index); and 40303 (August 4, 1998), 63 FR 42892 (August 11, 1998) (approving listing and trading of BRoad InDex Guarded Equity-linked Securities linked to the value of the Index).

[27] 15 U.S.C. 78*o*–3(b)(6).

[28] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

the relation of the value of the Index and the value of the Index on the day they are priced for initial sale to the public. If the Final Index Value is greater than the Initial Index Value, the payment at maturity per PLUS will equal the lesser of: (a) $10 plus the Leveraged Upside Payment and (b) the Maximum Payment at Maturity. If the Final Index Value is less than or equal to the Initial Index Value, the payment at maturity per PLUS will equal $10 times the Index Performance Factor.

Because the Final Index Value on the Notes is derivatively priced and based upon the performance value of the Index, there are several issues regarding the trading of this type of product. For reasons discussed below, the Commission believes that Nasdaq's proposal adequately addresses the concerns raised by this type of product.

First, the Commission notes that the protections of NASD Rule 4420(f) were designed to address the concerns attendant to the trading of hybrid securities like the Notes.[29] In particular, by imposing the hybrid listing standards, suitability for recommendations,[30] and compliance requirements, noted above, the Commission believes that Nasdaq has adequately addressed the potential problems that could arise from the hybrid nature of the Notes. The Commission notes that Nasdaq will distribute a circular to its membership that provides guidance regarding member firm compliance responsibilities and requirements, including suitability recommendations, and highlights the special risks and characteristics associated with the Notes. Specifically, among other things, the circular will indicate that the Notes do not guarantee a total return of principal at maturity, that the upside return on the Notes is expected to be capped between 58.5% to 63% over the original issue price $10 per PLUS,[31] that the Notes will not pay interest, and that the Notes will provide exposure in the Index. Distribution of the circular should help to ensure that only customers with an understanding of the risks attendant to the trading of the Notes and who are able to bear the financial risks associated with transactions in the Notes will trade the Notes. In addition, the Commission notes that Morgan Stanley will deliver a prospectus in connection with the initial purchase of the Notes.

Second, the Commission notes that the final rate of return on the Notes depends, in part, upon the individual credit of the issuer, Morgan Stanley. To some extent this credit risk is minimized by the NASD's listing standards in NASD Rule 4420(f), which provide that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities. In addition, the NASD's hybrid listing standards further require that the Notes have at least $4 million in market value.

Third, the Notes will be registered under Section 12 of the Act. As noted above, the NASD's and Nasdaq's existing equity trading rules will apply to the Notes, which will be subject to equity margin rules and will trade during the regular equity trading hours of 9:30 a.m. to 4 p.m. NASD Regulation's surveillance procedures for the Notes will be the same as its current surveillance procedures for equity securities and will include additional monitoring on key pricing dates.

Fourth, the Commission has a systemic concern that a broker-dealer, such as Morgan Stanley, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for the hybrid instruments issued by broker-dealers,[32] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Morgan Stanley.[33]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of the notice of filing thereof in the **Federal Register**. The Commission believes the Notes will provide investors with an additional investment choice and the accelerated approval of the proposal and allow investors to begin trading the Notes promptly.

In addition, the Commission notes that it has previously approved the listing of options on, and/or securities the performance of which is based on the Index.[34] The Commission has also previously approved the listing of securities with a structure that is the same or substantially the same as the Notes.[35]

Accordingly, the Commission believes there is good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act,[36] to approve the proposal, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–NASD–2004–138) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2709 Filed 10–18–04; 8:45 am]

BILLING CODE 8010–01–P

[29] *See* 1993 Order, *supra* note 3.

[30] As discussed above, Nasdaq will advise members recommending a transaction in the Notes to: (1) Determine that the transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the transaction.

[31] The Commission notes that the actual Initial Index Value on the day the Notes are priced for initial sale to the public will be disclosed in the final prospectus supplement.

[32] *See* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving File No. SR–NASD–2001–73) (approving the listing and trading of notes issued by Morgan Stanley Dean Witter & Co. whose return is based on the performance of the Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving File No. SR–Amex–2001–40) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving File No. SR–Amex–96–27) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a weighted portfolio of healthcare/biotechnology industry securities).

[33] The original issue price of the Notes includes commissions (and the secondary market prices are likely to exclude commissions) and Morgan Stanley's costs of hedging its obligations under the Notes. The costs could increase the Initial Value of the Notes, thus affecting the payment investors receive at maturity. The Commission expects such hedging activity to be conducted in accordance with applicable regulatory requirements.

[34] *See supra* note 11.

[35] *See* Securities Exchange Act Release Nos. 48677 (October 21, 2003), 68 FR 61524 (October 28, 2003) (approving the listing and trading of Accelerated Return Notes linked to the S&P 500); 47464 (March 7, 2003), 68 FR 12116 (March 13, 2003) (approving the listing and trading of Market Recovery Notes Linked to the S&P 500); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the S&P 500); 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the S&P 500); 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depositary Receipts based on the S&P 500); and 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500).

[36] 15 U.S.C. 78*o*3(b)(6) and 78s(b)(2).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50510; File No. SR–NYSE–2004–29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc., Relating to Amendments to Procedures for the Appointment of Arbitrators to Arbitration Cases

October 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 10, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed amendments to its arbitration rules as described in Items I, II and III below, which items have been prepared by NYSE.[3] On October 6, 2004, NYSE submitted Amendment Nos. 1 and 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended by Amendment Nos. 1 and 2, from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to NYSE Rule 607 concerning the procedures for the appointment of arbitrators to arbitration cases administered by NYSE. The proposed rule change would modify and make permanent an alternative method for the appointment of arbitrators currently offered under a pilot program.[5] The text of the proposed rule change, as amended by Amendment Nos. 1 and 2, is set forth below. Additions are in italics; deletions are in brackets.

* * * * *

Rule 607

[Designation of Number of Arbitrators]

Appointment of Arbitrators

(a) (1) In all arbitration matters involving customers and non-members where the matter in controversy exceeds $25,000, or where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel which shall consist of no less than three (3) arbitrators, at least a majority of whom shall not be from the securities industry, unless the customer or non-member requests a panel consisting of at least a majority from the securities industry.

(2) An arbitrator will be deemed as being from the securities industry if he or she:

(i) Is a person associated with a member, broker/dealer, government securities broker, government securities dealer, municipal securities dealer or registered investment adviser, or

(ii) Has been associated with any of the above within the past five (5) years, or

(iii) Is retired from or spent a substantial part of his or her business career in any of the above, or

(iv) Is an attorney, accountant or other professional who devoted twenty (20) percent or more of his or her professional work effort to securities industry clients within the last two (2) years [.] *, or*

(v) Is an individual who is registered under the Commodity Exchange Act or is a member of a registered futures association or any commodity exchange or is associated with any such person(s).

(3) An arbitrator who is not from the securities industry shall be deemed a public arbitrator. A person will not be classified as a public arbitrator if he or she has a spouse or other member of the household who is a person associated with a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer or investment adviser.

(b) Composition of Panels

The individuals who shall serve on a particular arbitration panel shall be determined by the Director of Arbitration. The Director of Arbitration may name the chairman of each panel.

[Voluntary Supplemental Procedures for Selecting Arbitrators]

[(a)] *(c)* Party Agreement on Arbitrator Selection

[Under Exchange Rules, the Director of Arbitration appoints the arbitrators, subject to the parties' peremptory challenges. The parties may agree on an alternative way to select arbitrators.] If all parties agree, they may select the arbitrators [themselves or decide how they will be selected. The Exchange will accommodate any reasonable alternative way to select arbitrators, provided the parties agree. The Exchange also offers two alternative ways to appoint arbitrators. The following is a brief description of each method] *according to Random List Selection, as described below.*

[(b) Random List Selection]

[1.] *(1) Random List Selection*—The Number and Type of Arbitrators

(i) Claims up to $25,000. One public arbitrator*, unless the customer or non-member requests a securities industry arbitrator,* will decide claims up to $25,000 (not including costs and interest).

(ii) Claims above $25,000 or where no dollar amount is claimed or disclosed. Three arbitrators will decide claims above $25,000 (not including costs and interest) or where no dollar amount is claimed or disclosed. The arbitration panel shall consist of a majority of public arbitrators, unless the customer or non-member requests a majority from the securities industry.

(iii) How we classify arbitrators. A securities industry arbitrator is defined in NYSE Rule 607(a)(2). A public arbitrator is defined in NYSE Rule 607(a)(3). See also NYSE Guidelines for Classification of Arbitrators.

[2.] *(2)* Selecting Arbitrators [(in place of NYSE Rule 608 Notice of Selection of Arbitrators)]

(i) Lists of Arbitrators

[(1)] *(a)* If one arbitrator hears [a] *the* case, the Director of Arbitration will send each party a randomly-generated list *containing the names* of *three* public arbitrators, unless the customer or non-member requests *securities* industry arbitrators. *Each party may use one strike against this list.*

[(2)] *(b)* If three arbitrators [will] hear the case, the Director *of Arbitration* will send each party two randomly-generated lists[, one of public arbitrators and one of securities industry arbitrators]. *One list will contain the names of ten public arbitrators and the other list will contain the names of five securities industry arbitrators. If the customer or non-member requests a majority of securities industry*

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Although the proposed rule has not yet been published for comment, the Commission has received 1 comment letter, which is discussed below in note 3 and related text.

[4] *See* letter from Karen Kupersmith, Director of Arbitration, NYSE, to Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission, dated August 16, 2004 (''Amendment No. 1''); and letter from Karen Kupersmith, Director of Arbitration, NYSE, to Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission, dated October 5, 2004 (''Amendment No. 2'').

[5] The pilot program originally was set up for a two-year period. *See* Release No. 34–43214 (August 28, 2000), 65 FR 53247 (September 1, 2000) (SR–NYSE–2000–34) (order approving pilot program). Upon expiration of the two-year period, NYSE renewed the pilot for an additional two years, which expired on July 31, 2004, and then again until January 31, 2005. *See* Release No. 34–46372 (August 16, 2002), 67 FR 54521 (August 22, 2002) (SR–NYSE–2002–30) (order approving first extension of pilot program); Release No. 34–49915 (June 25, 2004), 69 FR 39993 (July 1, 2004) (SR–NYSE–2004–28) (order approving second extension of pilot program).

arbitrators, one list will contain the names of ten securities industry arbitrators and the other list will contain the names of five public arbitrators. Each party may use four strikes against the list of ten arbitrators and two strikes against the list of five arbitrators.

(c) The strikes referred to in (a) and (b) above are in lieu of the peremptory challenges referenced in Rule 609.

[(3)] *(d)* With the lists, [you] *the parties* will also receive the arbitrators' biographical profile. [and his or her] *Upon request, the Exchange will send a party an* [arbitrators'] *arbitrator's* last three NYSE arbitration decisions, if any.

(ii) Any party may ask the Director *of Arbitration* for more information about a potential arbitrator. The request for additional information must be made within the ten business days the party has to return the lists as provided in [Section (b)(2)(iii)(1)] *(iii) below. This time period of ten business days is applicable to all requests for additional information in this Rule and Rule 608.* The NYSE shall send the arbitrator's response to all parties at the same time. The Director *of Arbitration* has discretion to limit the additional information requested from the arbitrator. The request for more information will toll the time for returning the lists to the Director *of Arbitration.*

(iii) [You] *Parties* must return [your] lists within ten business days.

[(1)] *(a)* [You] *Parties* must return [your] lists to the Director *of Arbitration* within ten business days of the date [you] received [them], unless extended by the tolling period. The Director *of Arbitration* may extend the deadline for returning the lists if [the Director] *he/she* finds a reasonable basis for the extension. *The parties may also agree to extend the deadline.* [You] *Parties* must:

- Strike through the names of any unacceptable arbitrators, *as limited by the number of strikes as set forth above,* and
- Rank the remaining names in order of [your] preference, with ''1'' being the arbitrator [that you] most strongly [prefer] *preferred.*

[(2)] *(b)* If [you do] *a party does* not return [your] lists on time, the Director *of Arbitration* will proceed as if all arbitrators on the lists are acceptable to [you] *that party.* The NYSE will invite arbitrators to serve in the order of the parties' mutual preferences. [We determine mutual] *Mutual* preferences *are* determined by adding together the numbers assigned to each arbitrator and selecting arbitrators with the lowest numbers first. In the event of a tie, arbitrators will be selected in alphabetical order.

[(iv) Second List, if necessary

(1) If the Exchange cannot select arbitrators from the remaining names, a second list will be sent to the parties. The second list will contain three names for each vacancy on the panel. On the second list, each party has one non-renewable peremptory challenge for each vacancy on the panel. Each party is to number the remaining names in order of its preference. You must return the list to the Director within ten business days of the date you received it. The NYSE will invite arbitrators to serve in the order of the parties' mutual preferences.]

[(2)] *(c)* If no acceptable arbitrators are left on the [second list] *lists,* the Director *of Arbitration* will randomly appoint arbitrators. The Director *of Arbitration* will also randomly appoint one or more arbitrators if: (i) Acceptable arbitrators are unable to serve; or (ii) arbitrators cannot be found on the lists for any other reason.

[3.] *(3)* Objecting to Potential Arbitrators

([a] *i*) Multiple Parties. In cases where there are two or more people designated as claimants, respondents and/or third party respondents, each group so designated will share one set of strikes. The Director of Arbitration may allow additional strikes if [the Director] *he/she* determines that justice would be served by doing so.

([b] *ii*) Challenges for Cause. [You] *Parties* have an unlimited number of challenges for cause. The Director *of Arbitration* will determine *in accordance with Rule 609(b)* whether to grant a challenge for cause. If any arbitrator is removed from the list ''for cause'' before the expiration of the time to return the lists, a replacement name will be provided.

[4.] *(4)* Filling Vacancies of Arbitrators

([a] *i*) Vacancies before the first hearing. If an arbitrator must withdraw before the first hearing, the Director *of Arbitration* will invite the next arbitrator on the parties' lists to fill the vacancy. If there are no remaining names, or if the vacancy cannot be filled from the names on the lists, the Director *of Arbitration* will randomly appoint an arbitrator. [You] *A party* will receive the arbitrator's biographical profile*, and upon request,* [and] his or her last three NYSE arbitration decisions, if any, for the last 10 years *(see 2.(i)(d)).* [You] *A party* may ask the Director *of Arbitration* for additional information on the proposed arbitrator's background*, and* [You] may challenge the arbitrator for cause.

([b] *ii*) Vacancies after the hearing starts. This circumstance is governed by NYSE Rule 611.

[5.] *(5)* Disclosures

After the Exchange assembles a complete panel of arbitrators, the Exchange will notify the arbitrators of their appointment. The Exchange will advise the parties of any information disclosed by the arbitrators under Rule 610 (Disclosures Required by Arbitrators).

[(c) Enhanced List Selection

I. The Number and Type of Arbitrators

The Exchange will provide the parties with the names and profiles of six ''Public'' and three ''Securities'' arbitrators, unless the customer or non-member requests a majority of industry arbitrators. The Exchange will screen potential arbitrators for conflicts and availability and, if applicable, employment law experience or training, or other applicable expertise. The Director of Arbitration will advise the parties of any information disclosed by the arbitrators under Rule 610 (Disclosures Required by Arbitrators).

II. Selecting Arbitrators

(a) You Must Return Your Lists Within Ten Business Days

You must return your lists within ten business days. You will have ten business days from receipt of the lists to strike up to three names and number the remaining names, in order of their preference. The number ''1'' signifies the arbitrator that you most strongly prefer. The Exchange will appoint three arbitrators (two public and one securities) using the combined preference rankings of the parties. If a party does not return the lists within ten business days, the Exchange will consider all arbitrators on the lists as acceptable. If there is a tie in the rankings, the Exchange will invite arbitrators to serve in alphabetical order.

(b) Administrative Appointment

If an arbitrator is unable to serve, the Exchange will contact the next arbitrator from the remaining names on the lists. If the lists have been exhausted, the Exchange will appoint an arbitrator from outside the list. When the Exchange appoints an arbitrator, each party has one peremptory challenge for each arbitrator the Exchange appoints. A party must use a peremptory challenge within ten business days of receiving notice of the appointment of the arbitrator.

III. Multiple Parties

In cases where there are two or more people designated as claimants, respondents or third party respondents, each group so designated will share one set of strikes and/or one peremptory challenge. The Director of Arbitration may allow additional peremptory

challenges if he determines that justice would be served by doing so.

IV. Challenges for Cause

The parties have unlimited challenges for cause. The Director of Arbitration will decide whether to grant a challenge for cause. If any arbitrator is removed from the list ''for cause'' before the end of the time to return the lists, the Director of Arbitration will provide the parties with a replacement name.]

* * * * *

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE currently has several methods by which arbitrators are assigned to cases, including the traditional method pursuant to NYSE Rule 607, by which NYSE staff appoints arbitrators to cases. On August 1, 2000, NYSE implemented a pilot program to allow parties, on a voluntary basis, to select arbitrators under other alternative methods (in addition to the traditional method). The first alternative under the pilot is the Random List Selection method, by which the parties are provided randomly generated lists of public and securities industry arbitrators. The parties have ten days to strike and rank the names on the lists. Based on mutual ranking of the lists, the highest-ranking arbitrators are invited to serve on the case. If a panel cannot be generated from the first list, a second list is generated and sent to the parties, which provides three potential arbitrators for each vacancy and allows each party to use one peremptory challenge for each vacancy. If vacancies remain after the second list has been processed, arbitrators are randomly assigned by NYSE staff to serve, subject only to challenges for cause.

The second alternative method under the pilot is Enhanced List Selection, in which six public and three securities classified arbitrators are selected for lists by NYSE staff, based on the arbitrators' qualifications and expertise. The lists are sent to the parties. The parties are permitted to use a limited number of strikes and are required to rank the arbitrators not stricken. Based on mutual ranking of the lists, the highest-ranking arbitrators are invited to serve on the case.

Under the pilot program, the Exchange also will accommodate the use of any reasonable alternative method of selecting arbitrators that the parties decide upon, provided that the parties agree. Absent agreement to the use of Random List Selection, Enhanced List Selection, or any other reasonable alternative method, the traditional method is used.

The proposed rule change retains the traditional method of staff appointment of arbitrators and makes permanent a modified form of the Random List Selection currently in use. One of the modifications specifies that, for arbitrations involving a three-member panel, parties will be provided with randomly generated lists containing the names of 10 public and 5 securities industry arbitrators from which the parties may choose. The customer or non-member may request, however, that the panel consist of a majority of securities industry arbitrators. In that case, the parties will be provided with lists containing the names of 10 securities industry and 5 public arbitrators. In contrast, the pilot did not specify the numbers or types of arbitrators to be included on the lists. The proposed rule change also limits the number of strikes the parties may use: 4 against the public arbitrators and 2 against the securities industry arbitrators. Further, in order to simplify and shorten the appointment process, the proposed rule change eliminates the process of providing a second list of arbitrators to the parties in the event they cannot agree to a panel from the first list.

For simplified arbitrations (*i.e.,* those involving a one-member panel), the proposed rule change clarifies that the randomly generated selection list will contain the names of 3 arbitrators. These arbitrators will be public arbitrators, unless the customer or non-member requests otherwise. Each party may use 1 strike.

For simplified as well as non-simplified arbitrations, the proposed rule change gives the parties greater flexibility by permitting them to agree to extend the deadline in which to return their lists (*i.e.,* beyond the prescribed 10 business days). As under the pilot program, the parties must all agree to use Random List Selection, or the traditional method will be used. Finally, the proposed rule change provides that descriptions of an arbitrator's last 3 awards will be sent to a party only upon the party's request, thus eliminating unnecessary paperwork generated by the current rule. Parties now may view all awards on the NYSE Web site, which in effect provides greater access to information than before.

In that parties have rarely requested Enhanced List Selection or other alternative methods offered under the pilot program, NYSE is not proposing to make them permanent parts of NYSE's arbitrator selection program.

2. Statutory Basis

NYSE believes the proposed changes are consistent with Section 6(b)(5) of the Act,[6] in that they promote just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

III. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NYSE has neither solicited nor received written comments on the proposed rule change. The Commission has received, however, one comment letter from PIABA prior to the publication of the proposed rule filing.[7] The comment letter states that PIABA will have several comments on the substance of the proposed rule when it is published for comment and generally objects to the NYSE's failure to involve any participants in the arbitration process in the formulation of the proposed rule change prior to its filing with the Commission. At the Commission staff's request, NYSE has agreed to extend the comment period for the proposed rule change from 21 days to 45 days from its publication in the **Federal Register**.

IV. 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)

[6] 15 U.S.C. 78f(b)(5).

[7] *See* letter from Charles Austin, Jr., President, Public Investors Arbitration Bar Association, to Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission, dated June 23, 2004.

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change as amended is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–29 on the subject line.

Paper Comments

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–29 and should be submitted on or before December 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated Authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2708 Filed 10–18–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50527; File No. SR–PCX–2004–92]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Options Floor Access Fee and the Remote Market Maker Access Fee

October 13, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2004, the Pacific Exchange, Inc. (''PCX'' 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to make a clarifying change to the PCX Schedule of Fees and Charges (''Schedule'') with respect to the Options Floor Access Fee and the Remote Market Maker Access Fee. The text of the proposed rule change is available at the Office of the Secretary, the PCX, 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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make a clarifying change to the Schedule with respect to its Options Floor Access Fee and its Remote Market Maker Access Fee. Currently, all registered floor personnel (including Lead Market Makers, Floor Market Makers, etc.) are assessed a monthly fee of $130 for access to the Exchange with a cap of $5,000 per month per Firm. Remote Market Makers are also assessed an identical fee for their access to the Exchange. Hence, whether a Remote Market Maker accesses the Exchange from the trading floor or from off the trading floor, such Remote Market Maker is accessed one access fee of $130 per month. Since the fees are identical, the Exchange proposes to combine the two fees into one and name it ''Options Access Fee.'' The Exchange believes that combining the two access fees will provide greater clarity and simplify the rate schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[3] in general, and furthers the objectives of Section 6(b)(4)[4] in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members, issuers and other persons using its 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4). At the request of the PCX, the Commission staff corrected the statutory basis provided in the original filing from Section 6(b)(5) to Section 6(b)(4) of the Act. Telephone conversation between Tania J.C. Blanford, Staff Attorney, PCX and Jennifer C. Dodd, Attorney, Division of Market Regulation, Commission on October 12, 2004.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [5] and subparagraph (f)(2) of Rule 19b–4 thereunder [6] because it establishes or 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–PCX–2004–92 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathon G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–92. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. 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 No. SR–PCX–2004–92 and should be submitted on or before November 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2711 Filed 10–18–04; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50523; File No. SR–PCX–2004–94]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a Delay of the Operative Period for Priority and Order Allocation Procedures for PCX Plus

October 13, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2004, the Pacific Exchange, Inc. (''PCX'' 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 PCX has designated this proposal as one concerned solely with the administration of the Exchange under Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(3) 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to delay the operative date of recent amendments to PCX Rule 6.76 (Priority and Allocation Procedures of PCX Plus) [5] until on or before November 10, 2004.

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 PCX 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 PCX 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 Commission recently approved a rule proposal by the Exchange to amend PCX Rule 6.76(b).[6] The PCX states that the amended rules give PCX Market Makers the same access to the Consolidated Book that a Firm or Non-OTP Holder Market Maker [7] has. The Exchange believes that this rule amendment eliminates any potential biases that a PCX Market Maker may encounter when using PCX Plus. The approved rule also eliminates the Electronic Book Execution rules set forth in PCX Rule 6.76(b)(4) that prevents PCX Market Makers from immediately executing orders against the Consolidated Book.

The Exchange now seeks to delay the operative period of that rule until on or before November 10, 2004 so that the Exchange may give notice to its OTP Holders and OTP Firms of the approval

[5] *See* Securities Exchange Act Release No. 50430 (September 23, 2004), 69 FR 58210 (September 29, 2004).

[6] *See* Securities Exchange Act Release No. 50430 (September 23, 2004), 69 FR 58210 (September 29, 2004).

[7] The term ''Non-OTP Holder Market Maker'' includes, but is not limited to, specialists, designated primary market makers, lead market makers, market makers, registered options traders, primary market makers and competitive market makers registered on an exchange other than the PCX. *See* PCX Rule 6.1(b)(35).

and set up the appropriate technology. The Exchange omitted this request for a brief operative delay in its original proposal.

2. Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Sections 6(b)(5) of the Act [9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b–4(f)(3) thereunder,[11] because it is concerned solely with the administration of 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–PCX–2004–94 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–PCX–2004–94. 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 PCX. 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–PCX–2004–94 and should be submitted on or before November 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2712 Filed 10–18–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(3).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3632]

Commonwealth of Pennsylvania; Amendment #3

In accordance with notices received from the Department of Homeland Security—Federal Emergency Management Agency—effective October 1 and October 8, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning September 17, 2004 and continuing through October 1, 2004. This declaration is also amended to include Chester, Crawford, Delaware, Lawrence, Montgomery, Philadelphia, Somerset, and Sullivan counties as disaster areas due to damages caused by Tropical Depression Ivan. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Erie and Warren in the Commonwealth of Pennsylvania; New Castle County in the State of Delaware; Cecil and Garrett Counties in the State of Maryland; Camden and Gloucester Counties in the State of New Jersey; and Ashtabula, Mahoning, and Trumbull Counties in the State of Ohio may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have previously been declared. The economic injury number assigned to Delaware is 9AF100.

All other information remains the same, i.e., the deadline for filing applications for physical damage is November 18, 2004 and for economic injury the deadline is June 20, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 13, 2004.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–23401 Filed 10–18–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P068]

State of Tennessee

As a result of the President's major disaster declaration for Public Assistance on October 7, 2004, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Campbell, Carter, Clay, Cocke,

Cumberland, Grundy, Hamilton, Jackson, Johnson, Meigs, Polk, Rhea, and Roane Counties in the State of Tennessee constitute a disaster area due to damages caused by severe storms and flooding occurring on September 16–20, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 6, 2004 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations Without Credit Available Elsewhere	2.900
Non-Profit Organizations With Credit Available Elsewhere	4.875

The number assigned to this disaster for physical damage is P06806.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: October 13, 2004.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–23400 Filed 10–18–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P067]

Territory of U.S. Virgin Islands

As a result of the President's major disaster declaration for Public Assistance on October 7, 2004 the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that the islands of St. Croix, St. John, and St. Thomas in the Territory of U.S. Virgin Islands constitute a disaster area due to damages caused by Tropical Storm Jeanne occurring on September 14–17, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 6, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations Without Credit Available Elsewhere:	2.900.
Non-Profit Organizations with Credit Available Elsewhere:	4.875.

The number assigned to this disaster for physical damage is P06708.

(Catalog of Federal Domestic Assistance Program No. 59008.)

Dated: October 13, 2004.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–23402 Filed 10–18–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Audit and Financial Management Advisory (AFMAC) Committee Meeting

The U.S. Small Business Administration's Audit and Financial Management Advisory Committee (AFMAC) will be hosting its second meeting to discuss such matters that may be presented by members, and staff of the U.S. Small Business Administration, or others present. The meeting will begin on Monday, November 8, 2004, starting at 9 a.m. until noon. The meeting will be held at the U.S. Small Business Administration Headquarters, located at 409 3rd Street, SW., Washington, DC 20416, in the Chief Financial Officer's Conference Room, 6th Floor.

Anyone wishing to attend must contact Thomas Dumaresq in writing or by fax. Thomas Dumaresq, Chief Financial Officer , 409 3rd Street SW., Washington DC 20416, phone (202) 205–6506, fax: (202) 205–6869, e-mail: *thomas.dumaresq@sba.gov.*

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 04–23403 Filed 10–18–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 23–23, Standardization Guide for Integrated Cockpits in Part 23 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 23–23, Standardization Guide for Integrated Cockpits in Part 23 Airplanes. The AC acknowledges the General Aviation Manufacturers Association (GAMA) Publication #12, ''Recommended Practices and Guidelines for an Integrated Flightdeck/Cockpit in a 14 CFR Part 23 (or equivalent) Certificated Airplane,'' as an acceptable means for showing compliance with applicable requirements for electronic displays in part 23 airplanes. The AC acknowledges a publication that was developed using a public process; therefore, we are issuing the AC in a final form.

DATES: The Manager of the Small Airplane Directorate issued Advisory Circular 23–23 on September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Lowell Foster, Standards Office, ACE–111, 901 Locust, Kansas City, Missouri 64106; telephone 816–329–4125.

How to Obtain Copies: A paper copy of AC 23–23 may be obtained by writing to the U. S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Ave., Landover, MD 20785, telephone 301–322–5377, or by faxing your request to the warehouse at 301–386–5394. The AC will also be available on the Internet at *http://www.airweb.faa.gov/AC.*

A copy of the GAMA Publication #12 is available from GAMA. Their Web site is *http://www.gama.aero.* A combined industry and FAA team developed the GAMA publication.

Issued in Kansas City, Missouri on September 30, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–23389 Filed 10–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 16227]

Policy and Procedures Concerning the Use of Airport Revenue: Petition of the Sarasota-Manatee Airport Authority To Allow Use of Airport Revenue for Direct Subsidy of Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Denial of petition; disposition of comments.

SUMMARY: On March 10, 2003, the Sarasota-Manatee Airport Authority (SMAA) petitioned the FAA to amend the Policy and Procedures Concerning the Use of Airport Revenue (Revenue Use Policy). FAA requested comments. This notice responds to the comments received and denies the petition.

ADDRESSES: Comments received on the petition are available for public review in the Dockets Office, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. The documents have been filed under FAA Docket Number 2003–16227. The Dockets Office is open between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Charles Erhard, Manager, Airport Compliance Division, AAS–400, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591, telephone (202) 267–3085.

SUPPLEMENTARY INFORMATION:

I. The Petition

On March 10, 2003, the Federal Aviation Administration (FAA) received a petition from Frederick J. Piccolo, President, Chief Executive Officer of the Sarasota Manatee Airport Authority (SMAA), requesting that the FAA provide an opportunity for notice and comment on SMAA's proposed change to FAA's Policy and Procedures Concerning the Use of Airport Revenue (Revenue Use Policy). The petitioner requested that the FAA amend the Revenue Use Policy to permit certain airport sponsors to use airport revenue for the direct subsidy of commercial airline service under specific and limited circumstances. The FAA has interpreted Federal law to prohibit an airport sponsor that is the recipient or subject of Federal assistance for airport improvements from using airport revenue for a direct subsidy to an air carrier, and that interpretation is reflected in the Revenue Use Policy. The petitioner represents that some airport sponsors have been able to provide either financial subsidies or revenue guarantees carriers to secure airline service using non-airport funds. These airport sponsors are general-purpose municipalities that can use funds from non-airport sources for general economic development without restriction on their use under the Revenue Use Policy. In contrast, those airport sponsors governed by a special-purpose airport authority cannot provide direct subsidies to carriers, or use any revenue for general economic development, because all of their funds are considered airport revenue subject to the requirements in Federal law and the Revenue Use Policy.

Specifically, the petitioner requested an amendment to the Revenue Use Policy that would ''permit airports that have less than 0.25 percent of the total U.S. passenger boardings to use airport revenues at their discretion for subsidies to air carriers willing to provide service to those airports.'' The petitioner suggested the following conditions to be contingent to this amendment:

1. The community must have a minimum population of 200,000 residents in the airport's local county(s).

2. Airport revenues considered for use are not subject to the airline agreement in place and do not affect the rate-making methodology of the agreement.

3. Subsidy is limited to new service.

- Airline not presently at the airport.
- City pair not presently served by any airline at the applicant airport.

4. Subsidy cannot exceed 12 consecutive months to any airline.

5. Airline receiving the subsidy must be willing to provide the following:

- Daily scheduled service with a minimum seating capacity of 50 seats.
- Must commit to a minimum of twelve consecutive months of service.

Airline cannot utilize the program more than once at the same airport.

II. Discussion

A. Summary of Comments

Comments in support of the petition: In its petition and subsequently submitted comments, the SMAA argues that there is an inequity within the Revenue Use Policy that places airports governed by general-purpose municipalities at an advantage over airports governed by independent authorities. SMAA contends that municipally-run airports are free to use non-airport revenue to offer subsidies for airline service while independent authorities are prevented from providing subsidies from their airport revenues because of the Revenue Use Policy. SMAA states that in a few cases authority-governed airports have funds that FAA defines as airport revenue, but the funds are separate and distinct from revenues required to support airline costs under the airport rate-setting methodology. SMAA proposes that these funds should be allowed for use as a direct subsidy in the manner proposed in its petition, because the cost of the subsidy will not be borne by the incumbent airlines at those airports. In addition, SMAA contends that a successful subsidy program will add airline service and benefit the incumbent airlines by reducing their airport fees. SMAA also adds that this proposal is consistent with the intent of Congress, despite legislative language that might suggest otherwise, in part because SMAA and other airports like it are not monopolies, but rather experience passenger leakage to nearby, larger airports that can serve the same population. Therefore, airport authorities should have the ability to fight passenger leakage by subsidizing air service, to promote a long-term sustainable market.

Four airport operators besides the petitioner submitted comments in support of SMAA's proposal. Five other airport operators submitted comments generally in support, but with suggested changes in the limiting conditions. One airport operator suggested that any airport authority offering such subsidies, as outlined by the petitioner, be prevented from accepting funding under the Essential Air Service program.

The Airports Council International North America (ACI) and the American Association of Airport Executives (AAAE) submitted identical comments supporting the petition. ACI/AAAE stated that the FAA should allow any non-discriminatory subsidies, or at least the FAA should accept SMAA's proposal but without SMAA's proposed limits on population or aircraft capacity. ACI/AAAE also observed that:

''Under the current revenue-use policy, airport sponsors which are general-purpose municipalities may use funds from a non-airport source to provide direct subsidies. However, airport sponsors governed by a special-purpose airport authority cannot provide direct subsidies to air carriers, because all the funds are considered airport revenue subject to the revenue use policy prohibitions. Although general-purpose municipalities may use non-airport revenues for air carrier subsidies, the truth of the matter is that these municipalities and other airport sponsors, such as State departments of transportation, are also facing severe financial difficulty. Revising the revenue use policy to afford any airport the opportunity to offer a subsidy, regardless of airport sponsor status, should at lease provide a more level playing field for airports to solicit new routes and services.''

ACI/AAAE acknowledged that GAO determined that direct subsidies ''have not produced an effective transportation solution for passengers at many small communities.'' However, ACI/AAAE contend that even though ''direct

subsidies provided by individual airports will not address all or even the majority of inadequate air service issues, they are a legitimate tool.'' Finally, ACI/AAAE contend that the Revenue Use Policy is contradictory in that it permits airports to spend airport revenues for promotional and marketing programs and to waive landing and other fees for a limited period in order to entice new market entrants or encourage incumbent airlines to add service, but denies airports the ability to directly subsidize airline service from airport revenues.

Five airports submitted comments that the SMAA proposal is too narrow and would ''result in different treatment for different airports.'' The City of Fresno suggested that municipal airports be allowed to spend airport revenue for direct subsidies without the limitations requested in the petition. Other airports objected to the population limits, the 12-month duration limit, and aircraft size limits. Two individual users of Sarasota Bradenton International Airport commented in favor of the proposal, citing the high cost of fares at their preferred airport and the inconvenience of driving to a larger airport in a neighboring community. Two Sarasota area Chambers of Commerce submitted similar comments, stating, ''[t]he lack of adequate local air service has been a severe impediment to our efforts to attract new industry to our area.'' They also stated that the proposal would provide a region-wide benefit.

Comments opposing the petition: Three airport operators objected to the proposal. Generally, these commenters noted that unintended, potentially detrimental consequences could result from such a policy change. These consequences could include airports bidding for airline service or airlines demanding subsidies to keep service in a market. The manager of Ithaca Tompkins Regional Airport stated, ''In our fight for better airline service we would lose out to bigger airports simply because they can offer more money * * * * I think the Sarasota proposal could set a dangerous precedent for the nation's smallest airports. In addition, it would unfairly discriminate against incumbent carriers and create an uneven playing field. Ultimately, it could start a free-for-all and even end up being a detriment to Sarasota itself.''

The Aircraft Owners and Pilots Association (AOPA), the Regional Airline Association (RAA), and the Air Transport Association (ATA), American Airlines, and Continental Airlines all submitted comments in opposition. AOPA stated that it is strongly opposed to the proposal: ''The safety and utility of our national air transportation system relies on the ability of an airport sponsor to maintain an airport in a safe and serviceable condition. An airport sponsor remains responsible for funding airport projects. Using airport revenue to subsidize airline service would take away from an airport's ability to fund airport improvement projects.'' AOPA also states its concern that air carriers will pressure airports to provide such subsidies, basing service on the amount or availability of the subsidy, instead of the underlying market, echoing some of the comments from airports in opposition. ATA and other users stated that the change proposed by the petitioner would require a change in Federal law, since the law prohibits the use of airport revenue for general economic development. They noted that both the SMAA and the Sarasota area Chambers of Commerce acknowledge that a purpose of the proposal is general economic development. ATA argues that the Revenue Use Policy explicitly prohibits the use of airport revenue for the subsidy of airline service, regardless of the governing structure of an airport. ATA contends that SMAA's premise that the policy is somehow inequitable is flawed because the Revenue Use Policy currently treats all airports exactly the same. ATA also contends that, regardless of the governing structure, ''an airport may receive financial assistance from local or state governments or from private organizations without running afoul of the Revenue Use Policy.'' ATA concludes that, notwithstanding the prohibition of subsidies under Federal law and policy, the SMAA proposal, if enacted, would violate Federal grant assurances 22 and 23, because it would limit subsidies to airlines not presently serving SMAA and would therefore discriminate against incumbent airlines. Finally, ATA stated, ''the use of any airport revenue to subsidize air service suggests that other airport needs are going unmet, or alternatively that charges are higher than they otherwise would have to be to maintain a self-sustaining rate structure.''

B. Summary of Relevant Law and Policy

Petitions to amend the Revenue Use Policy must be evaluated with consideration of the controlling Federal law.

Title 49 U.S.C. 47107(b)(1) requires that grant agreements for airport development grants include an assurance that ''the revenues generated by a public airport will be expended for the capital or operating costs of—(A) The airport; (B) the local airport system; or (C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.'' A substantially similar requirement is included in 49 U.S.C. 47133, which applies directly to any airport that has received Federal assistance. In 1994, Congress expressly prohibited ''the use of airport revenues for general economic development, marketing and promotional activities unrelated to airports or airport systems.'' 49 U.S.C. 47107(1)(2)(b). Sections V and VI of the Revenue Use Policy, at 64 FR 7718–20, respectively, list uses of airport revenue considered to be permitted or prohibited under the above statutes. The list of prohibited uses of airport revenue in section VI B. includes the following:

''12. Direct subsidy of air carrier operations. Direct subsidies are considered to be payments of airport funds to carriers for air service. Prohibited direct subsidies do not include waivers of fees or discounted landing or other fees during a promotional period. Any fee waiver or discount must be offered to all users of the airport, and provided to all users that are willing to provide the same type and level of new services consistent with the promotional offering. Likewise prohibited direct subsidies do not include support for airline advertising or marketing of new services to the extent permitted by Section V of this Policy Statement.''

Some of the commenters discussed the applicability of Federal law under the Airline Deregulation Act of 1978 (ADA). Under the ADA's preemption provision, 49 U.S.C. 41713(b), State and local governments are prohibited from enacting or enforcing any provision having the force or effect of law related to a ''price, route, or service of an air carrier * * *''

C. Discussion

Legal issues: The FAA fully appreciates the impact of the loss of air service at commercial airports and the interest of the petitioner and other airports in obtaining the ability to subsidize air service at their airports. While there are policy arguments for and against the requested change in Federal policy, the initial question in reviewing the petition is whether the FAA could adopt the requested policy change without a change in the authorizing statute. As noted above by statute, all revenues of the airport must be used for airport ''capital or operating'' costs. In its 1999 Revenue Use Policy, the FAA interpreted this statute to prohibit use of airport revenue to subsidize airline service, on the basis

that such a subsidy would not be a capital or operating cost of the airport. Granting the petition would require a reversal of that interpretation.

There has been no fundamental change in the respective roles of airport operators and air carriers and other airport users at U.S. airports since 1999. Nor has there been any amendment to the statutes governing use of airport revenue that would suggest that Congress favored a different interpretation. The FAA continues to believe that payments to airlines to increase airline use of the airport are not an operating cost of the airport itself. It is clear even from supporting comments that airline service is considered primarily an economic development benefit to the general community.

Another argument made for considering subsidies to airlines as a cost of airport operation is that there is no practical business or economic distinction between a subsidy using airport revenue, which is now prohibited, and a reduction in the fees charged to the carrier, which is permitted on a temporary promotional basis. The FAA's different treatment of subsidies and promotional fee waivers is based on specific statutes controlling airport revenue and airport fees, respectively. When an airport accepts Airport Improvement Program (AIP) grants, it agrees not to use its revenue in ways that might otherwise be legal and perhaps even routine for Government agencies and businesses that are not subject to AIP grant assurances. This restriction is grounded in Congress' interest in a ''closed'' system that dedicates airport revenue for airport purposes, and prevents a hidden municipal tax on air transportation. The requirement to use airport revenue for airport purposes is absolute; once a federally obligated airport receives a dollar of airport revenue, that dollar must be used for the purposes listed in 49 U.S.C. 47107(b) and 47133—effectively the capital and operating costs of the airport. If subsidizing airline service is not considered to be a capital or operating cost of the airport, then the airport operator cannot use any revenue for that purpose, even a small amount, or even temporarily.

In contrast, the statutes relating to airport rates and charges are much less prescriptive. Airport fees are subject to broad requirements of reasonableness and nondiscrimination, under 49 U.S.C. 40116 and 47107(a)(1), but the actual fees are set by the airport operator. Airport operators have substantial discretion in setting fees and routinely set fees to accomplish a variety of objectives. The FAA reviews fee methodologies and resulting fees to see that they are reasonable and not unjustly discriminatory, but does not generally inquire in the airport operator's policies or strategic objectives. Accordingly, the FAA evaluates promotional fee waiver programs to ensure the programs are not unjustly discriminatory and that the costs of a fee waiver are not in any way passed on to other operators, but does not consider the purposes or effectiveness of the program. Given the latitude provided the airport operator by 49 U.S.C. 40116 and 47107(a)(1) to set fees, the FAA has found that a temporary promotional fee discount or waiver is not inconsistent with those statutes. In contrast, the laws controlling use of airport revenue do not provide that latitude, and the FAA believes that its respective treatment of revenue use and promotional fee waivers is the correct interpretation of two substantially different statutes. Accordingly, we do not believe an analogy of subsidies to fee waivers justifies a reversal of the interpretation that airline subsidies are not a capital or operating cost of the airport.

Finally, some commenters thought that the preemption provision in the ADA, 49 U.S.C. 41713(b), argue against airport subsidies for air carriers. We believe that the applicability of section 41713(b) would be the same for air carrier subsidies, which are the subject of the petition, and for promotional fee waiver programs, which are currently permitted under the self-sustaining rate requirement (grant assurance 24). A particular program might raise a preemption issue, but that could be the case with fee waiver programs just as easily as with subsidy programs. Therefore, the fact that some carrier subsidy programs could be preempted by section 41713(b) is not a factor in evaluating whether carrier subsidies in general could be allowed at all.

In summary, the FAA understands that the SMAA and many other airport operators consider it critical to find ways to attract new air service, promote airline competition, and reduce ticket prices at their airports. Airport operators have various options available for this purpose that are consistent with the AIP grant assurances. However, the FAA remains convinced that the policy stated in the 1999 Revenue Use Policy, *i.e.,* that direct subsidies to airlines to provide service are not a capital or operating cost of the airport, remains the best interpretation of section 41713(b) and section 47133. If Congress at any point changes the requirements applicable to the use of airport revenue, the FAA would revise its policy to reflect the change.

The Comments on the SMAA petition include a good representation of the arguments for and against a change in law or policy to permit use of airport revenue to subsidize air service. In any legislative reconsideration of the statutory language that controls use of airport revenue, we believe the following points raised by commenters should be considered.

Relative position of airport authorities and municipally-owned airports: SMAA states that the provisions of the Revenue Use Policy, as applied to the governing structure of an airport, limit the ability to offer subsidies to some airport sponsors,but not others. As the policy stands now, neither municipal governments nor airport authorities can spend airport revenue on direct airline subsidies. Both municipal governments and airport authorities may spend non-airport revenue on subsidies, including general fund revenue but also funds from local economic development authorities and from local businesses and business organizations. SMAA argues that the inequity arises because airport authorities generally do not have access to non-airport revenue, while municipal and State government airport operators do. While this is true with respect to general fund revenue, it is less true with respect to other sources, such as funds provided by local businesses or business organizations, directly or through guaranteed travel. Also, there may be many reasons why it would be difficult for a municipal airport operator to use general funds for an airport project, including a direct air carrier subsidy for air service. Accordingly, the FAA would agree that the lack of direct access to general fund revenue may put an airport authority at a disadvantage. However, that disadvantage is probably not as great as the SMAA and some other commenters represent.

Effectiveness: Before any effort to change the law to clearly permit subsidy of air carrier service with airport revenue, the effectiveness of such subsidies would need to be considered. The GAO, in report no. 03–330, Commercial Aviation: Factors Affecting Efforts to Improve Air Service at Small Community Airports, January 2003, indicated that direct subsidies for airline service have not had a demonstrated record of successfully sustaining air service once the subsidies expire. A temporary subsidy, as requested in the petition, would seem to have the potential for a long-term positive result in only a narrow set of circumstances, *i.e.,* where (1) an airline

did not believe that service would currently be profitable, but (2) the airline did believe that a modest subsidy would cover losses in the short term, and (3) the particular market had sufficient potential that it would support profitable service without a subsidy at the end of the promotional subsidy period.

Unintended consequences: Some commenters noted that allowing the subsidy of air carrier service with airport revenue, as proposed by SMAA, could produce unintended and counter-productive consequences. Airlines could use such a program to demand subsidies to maintain existing service at an airport. SMAA proposed limitations and conditions on the program that would limit the scope of subsidies (and airline demands for subsidies). However, if promotional subsidy of new airline service were a permissible use of airport revenue, it is not clear what authority FAA would rely on to limit that use to some airports and not others. Several commenters noted another possible consequence of a subsidy to airlines *i.e.,* a subsidy program could reduce funds available for capital improvements and operating and maintenance costs of the airport. Whether a subsidy resulted in a net cost to the airport would depend on whether fees from new service were sufficient to offset the subsidy, and the success of the subsidy in generating new service in the long term.

III. Conclusion

The FAA understands that SMAA and other airports consider it essential to find ways to attract new air service to their airports. While it is unclear whether temporary subsidies to airlines would be effective in generating new service beyond the subsidy period, we can understand why SMAA and others would like to use every possible tool available for this purpose. The FAA has interpreted other laws to provide flexibility for airport operators, such as the ability to reduce or even waive fees charged to carriers for a substantial promotional period. However, we do not find that same flexibility in the laws governing the use of airport revenue. Congress has repeatedly asserted its interest in the strict interpretation and enforcement of the use of airport revenue for purposes which are clearly capital and operating costs of the airport. We do not find that the petition or comments provide a sufficient basis for the FAA to reverse its longstanding interpretation that subsidies to airlines are not a capital or operating cost of an airport. Accordingly, the petition is denied.

Issued in Washington, DC on October 6, 2004.

Woodie Woodward,

Associate Administrator for Airports.

[FR Doc. 04–23381 Filed 10–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Final Environmental Impact Statement (FEIS), Notice of Holding Period for Master Plan Development Including Runway Safety Area Enhancement/ Extension of Runway 12–30 and Other Improvements of Gary/Chicago International Airport located in Gary, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability, notice of holding period.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that a Final Environmental Impact Statement (FEIS)—Master Plan Development Including Runway Safety Area Enhancement/Extension of Runway 12–30 and Other Improvements, Gary/ Chicago International Airport, has been prepared and is in a 30-day holding period before a Record of Decision can be signed and issued. Written requests for the FEIS and written comments on the FEIS can be submitted to the individual listed in the **FOR FURTHER INFORMATION CONTACT**. The holding period will commence on October 22, 2004 and will close on November 22, 2004.

Public Availability: Copies of the FEIS may be viewed during regular business hours at the following locations:

1. Gary/Chicago International Airport, 6001 West Industrial Highway, Gary, Indiana 46406.
2. Chicago Airports District Office, Room 312, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.
3. Gary Public Library, 220 West 5th Avenue, Gary, Indiana 46402.
4. Hammond Public Library, 564 State Street, Hammond, Indiana 46320.
5. East Chicago Main Library, 2401 East Columbus Drive, East Chicago, Indiana 46312.
6. IU Northwest Library, 3400 Broadway, Gary Indiana 46408.
7. Lake County Main Library, 1919 West 81st Avenue, Merrillville, Indiana 46410–5382.
8. Purdue Calumet Library, 2200 169th Street, Hammond, Indiana 46323–2094.

The FEIS will be available during the Council on Environmental Quality's required 30-day holding period from October 22, 2004 to November 22, 2004. The FAA will accept comments until November 23, 2004 at the address listed in the section entitled **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Airports Environmental Program Manager, Federal Aviation Administration, Airports Division, Room 315, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Mr. Snyder can be contacted at (847) 294–7538 (voice), (847) 294–7036 (facsimile) or by e-mail at *9–AGL–GYY–EIS–Project@faa.gov.*

SUPPLEMENTARY INFORMATION: At the request of the Gary/Chicago Airport Authority, the FAA has prepared an Environmental Impact Statement. The review addressed specific improvements at the Gary/Chicago International Airport as identified during the 2001 Airport Master Plan process and the 2003 Railroad Relocation Study, and shown on the 2001 Airport Layout Plan. The following improvements have been grouped into four categories and are identified as ripe for review and decision: (1) Improvements associated with the existing Runway 12–30, the primary air carrier runway at the airport, relocate the E.J. & E. Railroad, acquire land northwest of the airport to allow for modifications to the runway safety area, relocate the airside perimeter roadway (including providing a southwest access roadway), relocate the Runway 12–30 navaids, improve the Runway Safety Area for Runway 12, relocate the Runway 12 threshold to remove prior displacement, and acquire land southeast of the airport, located within or immediately adjacent to the runway protection zone; (2) Extension of Runway 12–30, (1356 feet), relocate the Runway 12–30 navaids, extend parallel taxiway A to the new end of Runway 12, construct deicing hold pads on Taxiway A at Runway 12 and Runway 30, and develop two high-sped exit taxiways; (3) Expansion of the existing passenger terminal to accommodate projected demands; and (4) analysis of sites adjacent to the extended runway for potential aviation related development, including a future new passenger terminal and air cargo area.

The purpose and need for these improvements is reviewed in the FEIS. All reasonable alternative have been considered including the no-action alternative.

Issued in Des Plaines, Illinois on October 8, 2004.

Philip M. Smithmeyer,

Manager, Chicago Airports Districts Office, FAA, Great Lakes Region.

[FR Doc. 04–23382 Filed 10–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–16–C–00–CHO To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Charlottesville-Albemarle Airport, Charlottesville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Charlottesville-Albemarle Airport (CHO) under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 18, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, Virginia 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bryan O. Elliott, Executive Director, Charlottesville-Albemarle Airport of the Charlottesville-Albemarle Airport Authority at the following address: Charlottesville-Albemarle Airport Authority, Charlottesville-Albemarle Airport, 201 Bowen Loop Road, Suite 200, Charlottesville, Virginia 24012–1148.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the public agency full name under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Terry J. Page, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, Virginia 20166, Telephone: (703) 661–1354.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Charlottesville-Albemarle Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 12, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Charlottesville-Albemarle Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 22, 2004.

The following is a brief overview of the application.

Proposed charge effective date: August 1, 2007.

Proposed charge expiration date: August 1, 2015.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $5,499,286.

Brief description of proposed projects(s): Air Carrier Debt Service; Rehabilitate and Expand General Aviation parking Apron; Rehabilitate Air Carrier Apron; Project Administration Fees.

Level of the proposed PFC: $4.50.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Tax/Commercial Operators (ATCO) required to file FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, New York 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Charlottesville-Albemarle Airport Authority.

Issued in Dulles, Virginia on October 12, 2004.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 04–23385 Filed 10–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 04–07–C–00–JNU to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Juneau International Airport, Juneau, Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Juneau International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before November 18, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Byron K. Huffman, Manager, Alaskan Region Airports Division, 222 West 7th Avenue, Box 14, Anchorage, AK 99513. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Allan A. Heese, Airport Manager, of the Juneau International Airport at the following address: Juneau International Airport, 1873 Shell Simmons Drive, Juneau, AK 99801.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Juneau International Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: James Lomen, Programming Specialist, Alaskan Region Airports Division, AAL-610, 222 W 7th Avenue, Box 14, Anchorage, AK 99513, (907) 271–5816. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Juneau International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 5, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City and Borough of Juneau, Juneau International Airport, Juneau, Alaska was substantially complete within the requirements of §158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 5, 2005.

The following is a brief overview of the application.

Proposed charge effective date: January 1, 2005.

Proposed charge expiration date: November 30, 2009.

Level of proposed PFC: $4.50.

Total estimated PFC revenue: $4,706,313.

Brief description of proposed projects:

Projects To Impose and Use: Airport Improvement Program matching funds for: Equipment purchase AIP-35 (Snow Brooms, Skidsteer, Command Vehicle, Chemical Truck); Departure Area Security Improvements (AIP-36); Security Upgrades and Equipment Phase 2 (AIP-38); Rehabiliate Airport Main Entrance Road; Expand Terminal Building—Feasibility Study/Planning; Construct Taxiway Extensions C1, W2; Acquire Airside Vehicles & Equipment; Construct Delta-1 Ramp Expansion; Acquire Security Vehicle, and Rehabilitate West GA Area Paving. Full project funding for: Purchase of snow removal support vehicle (unit 4) and Purchase Land for Airport Expansion.

Impose-Only Project: Wildlife Hazard Management Plan Implementation, Phase 1.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: 222 W 7th Avenue, Anchorage, AK.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Juneau International Airport, 1873 Shell Simmons Drive, Juneau, AK.

Issued in Anchorage, Alaska, on October 6, 2004.

Byron K. Huffman,

Manager, Airports Division, Alaskan Region.

[FR Doc. 04–23383 Filed 10–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 33]

Railroad Safety Advisory Committee (RSAC); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Working Group Activities.

SUMMARY: The FRA is updating its announcement of RSAC's working group activities to reflect its current status. For additional details on completed activities see prior working group activity notices (68 FR 25677).

FOR FURTHER INFORMATION CONTACT: Patricia Butera, RSAC Coordinator, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6212 or Grady Cothen, Acting Associate Administrator for Safety, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports of May 3, 2004, (69 FR 24219). The 24th full Committee meeting was held September 22, 2004.

Since its first meeting in April of 1996, the RSAC has accepted eighteen tasks. Status for each of the tasks is provided below:

Open Tasks

Task 96–4—Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This Task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulations task. Planned future activities involve the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads. Contact: Grady Cothen (202) 493–6302.

Task 97–1—Developing crashworthiness specifications to promote the integrity of the locomotive cab in accidents resulting from collisions. This Task was accepted on June 24, 1997. On April 14, 2004, RSAC reached consensus on the Notice of Proposed Rulemaking (NPRM). The NPRM is pending review within the Executive Branch. The NPRM is a new standard to increase the crashworthiness of conventional wide- and narrow-nose locomotives and codifies requirements for monocoque locomotives. Contact: Charles Bielitz (202) 493–6314.

Task 97–2—Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate. This Task was accepted June 24, 1997.

(Sanitation) (Completed)

(Noise exposure) On June 27, 2003, the full RSAC gave consensus by ballot on the NPRM. The NPRM was published in the **Federal Register** on June 23, 2004. The comment period ended September 21, 2004. The FRA is reviewing the comments.

(Cab Temperature) (Completed)

Note: Additional related topics such as vibration may be considered by the Working Group in the future. Contact: Jeffrey Horn (202) 493–6283.

Task 97–3—Developing event recorder data survivability standards. This Task was accepted on June 24, 1997. On November 12, 2003, the RSAC gave consensus by ballot on the NPRM. The NPRM was published on June 30, 2004. A public hearing was held September 30, and the comment period was extended until October 11. Contact: Edward Pritchard (202) 493–6247.

Task 97–4 and *Task 97–5*—Defining Positive Train Control (PTC) functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment.

Task 97–6—Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems. These three tasks were accepted on September 30, 1997, and assigned to a single Working Group.

(Report to the Administrator) A Data and Implementation Task Force, formed to address issues such as assessment of costs and benefits and technical readiness, completed a report on the future of PTC systems. The report was accepted as RSAC's Report to the Administrator at the September 8, 1999, meeting. The FRA enclosed the report with a letter to Congress signed May 17, 2000.

(Regulatory development) The Standards Task Force, formed to develop PTC standards, assisted in developing draft recommendations for performance-based standards for processor-based signal and train control systems. The NPRM was approved by consensus at the full RSAC meeting held on September 14, 2000. The NPRM was published in the **Federal Register** on August 10, 2001. A meeting of the Working Group was held December 4–6, 2001, in San Antonio, Texas, to formulate recommendations for resolution of issues raised in the public comments. Agreement was reached on most issues raised in the comments. A meeting was held May 14–15, 2002, in Colorado Springs, Colorado, at which the Working Group approved creation of teams to further explore the ''base case'' issue. Briefing of the full RSAC on the ''base case'' issue was completed on May 29, 2002, and consultations continued within the working group. The full Working Group met October 22–23, 2002, and again March 4–6, 2003. Resolution of the remaining issues was considered by the Working Group

at the July 8–9, 2003, meeting. The Working Group achieved consensus on recommendations for resolution of a portion of the issues in the proceeding. The full Committee considered the Working Group recommendations by mail ballots scheduled for return on August 14, 2003; however, a majority of the members voting did not concur. FRA has proceeded with preparation of a final rule, which is currently being reviewed in the Executive Branch.

Task 00–1—Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing or inspecting rear end marking devices (Blue Signal Protection). The Working Group held its first meeting on October 16–18, 2000, and six subsequent meetings have also been held. The Working Group significantly narrowed the issues, but did not reach full consensus on recommendations for regulatory action. The Administrator announced at the full RSAC meeting on December 2, 2003, that the task is withdrawn and the issue may be pursued at a later date. Contact: Doug Taylor (202) 493–6255.

Task 03–01–Passenger Safety. This task was accepted May 20, 2003, and a Working Group was established. Prior to embarking on substantive discussions of a specific task, the Working Group set forth in writing a specific description of the task. The Working Group will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. At the first meeting held September 9–10, 2003, a consolidated list of issues was completed. At the second meeting held November 6–7, 2003, five task groups were established: crashworthiness/glazing; emergency preparedness; mechanical-general issues; mechanical-safety appliances; and track/vehicle interaction. The task groups met and reported on activities for Working Group consideration at the third meeting held May 11–12, 2004. The task groups continue to meet and will report on its activities at the fourth Working Group meeting scheduled for October 26–27, 2004.

Completed Tasks:

Task 96–1—(Completed) Revising the Freight Power Brake Regulations.

Task 96–2—(Completed) Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213).

Task 96–3—(Completed) Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220).

Task 96–5—(Completed) Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR Part 230).

Task 96–6—(Completed) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240).

Task 96–7—(Completed) Developing Roadway Maintenance Machines (On-Track Equipment) Safety Standards.

Task 96–8—(Completed) This Planning Task evaluated the need for action responsive to recommendations contained in a report to Congress entitled, *Locomotive Crashworthiness & Working Conditions.*

Task 97–7—(Completed) Determining damages qualifying an event as a reportable train accident.

Task 01–1—(Completed) Developing conformity of FRA's regulations for accident/incident reporting (49 CFR Part 225) to revised regulations of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, and to make appropriate revisions to the *FRA Guide for Preparing Accident/Incident Reports* (Reporting Guide).

Please refer to the notice published in the **Federal Register** on March 11, 1996, (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC, on October 12, 2004.

Grady C. Cothen,

Acting Associate Administrator for Safety.

[FR Doc. 04–23384 Filed 10–18–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Waiver Petition Docket Number FRA–2004–18896]

The Union Pacific Railroad Company (UPRR) seeks a waiver of compliance with the Locomotive Safety Standards, 49 CFR 229.49(a)(1) and with the Brake System Safety Standards 49 CFR 232.103(o)(2), as they pertain to main reservoir safety valve setting and minimal deferential between brake pipe and main reservoir air pressure on UPRR locomotives. The railroad states in their request that their locomotive safety valves are set at 150 (one hundred fifty) pounds-per-square-inch (psi) and the maximum working pressure of 125 psi (one hundred twenty-five) creating a 25 (twenty-five) psi differential. Locomotive safety standards (49 CFR 229.46(a)(1) requires that the main reservoir system of each locomotive shall be equipped with at least one safety valve that shall prevent an accumulation of pressure of more than 15 pounds per square inch above the maximum working air pressure and Brake System Safety Standards (49 CFR 232.103(o)(2)) requires minimum differential 15 psi between brake pipe and main reservoir air pressures, with brake valve in running position. UPRR adjusted its fleet of locomotives maximum working air pressure from 135 psi to125 psi in the late 1970's as a method to conserve fuel. The 150 psi safety valve setting was maintained so that UPRR locomotives remained compatible when operated in consist with foreign locomotives. UPRR has operated their locomotives with the 125 psi maximum working air pressure for over twenty-five years and reports no adverse effect.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2004–18896) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for

inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–19478). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on October 12, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–23386 Filed 10–18–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian National Railway Company

(Waiver Petition Docket Number FRA–2004–18960)

The Canadian National Railway Company (CN) seeks a waiver of compliance with the *Locomotive Safety Standards,* 49 CFR 229.23, 229.27, and 229.29, as they pertain to the requirement to maintain the locomotive repair record form FRA 6180.49A, commonly referred to as the Blue Card, in the cab of their locomotives. If granted, CN would maintain locomotive inspection information in a secure data base. The data base would be maintained as the required office copy of form FRA 6180.49A. A computer generated form, which is similar to and contains all information currently contained on the required FRA 6180.49A, would be maintained on board the locomotive. In place of required signatures of persons performing inspections and tests, CN employees would be provided a unique login identification number and a secure password to access the system and verify performance of inspections. In place of signatures, computer generated reports would block print the name of the employee performing a required inspection and block print the employees supervisor who is certifying that all inspections have been made and all repairs were completed. Required filing of the previous inspection record will be maintained through the data base.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2004–18960) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–19478). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on October 12, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–23388 Filed 10–18–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34555)

City of Tacoma, Department of Public Utilities, Beltline Division, d/b/a Tacoma Rail or Tacoma Municipal Beltline or TMBL—Acquisition and Operation Exemption—Lakeview Subdivision, Quadlok-St. Clair and Belmore-Olympia Rail Lines in Pierce and Thurston Counties, WA

The City of Tacoma, Department of Public Utilities, Beltline Division, d/b/a Tacoma Rail or Tacoma Municipal Beltline or TMBL (TMBL), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 28 miles of rail line, and to obtain approximately 22 miles of incidental trackage rights, in Pierce and Thurston Counties, WA. Specifically, TMBL intends: (1) To acquire a freight service easement from The Burlington Northern and Santa Fe Railway Company (BNSF) from milepost 2.15 at South Tacoma to milepost 8.92 at Lakeview Junction, and from milepost 0.0 at West Lakeview to milepost 10.98 at Nisqually, a total distance of 17.75 miles in Pierce County; (2) to lease BNSF's right-of-way from milepost 3.27 at Quadlok to milepost 0.0 at St. Clair, and from milepost 16.0 at Belmore to milepost 9.07 at Olympia, a total distance of 10.2 miles in Thurston County; and (3) to obtain incidental trackage rights from BNSF from milepost 23.0 at Nisqually to milepost 37.00 at East Olympia, and to be assigned incidental trackage rights from BNSF over Union Pacific Railroad Company's rail line from milepost 0.0 at East Olympia to milepost 9.07 at Olympia. [1]

Because TMBL's projected annual revenues will exceed $5 million, it certified to the Board on September 17, 2004, that it sent the required notice of the transaction on July 29, 2004, to the national offices of all labor unions representing employees on the line and that a copy of the notice was posted at the workplace of the employees on the affected lines on July 30, 2004. [2]

[1] According to TMBL, an agreement has been reached between BNSF, as seller and lessor of the real estate and grantor of incidental trackage rights, and TMBL, as buyer and lessee of the real estate and grantee of incidental trackage rights.

[2] Inasmuch as TMBL did not certify to the Board compliance with 49 CFR 1150.42(e) 60 days prior to its intended consummation of the transaction, it sought waiver of the 60-day certification requirement. The Board denied that request in a decision served on September 27, 2004. As a consequence, this exemption is not scheduled to become effective until November 16, 2004, and the

The transaction is scheduled to be consummated on or after November 16, 2004.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34555, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Jeffrey O. Moreno, 1920 N Street, NW., Suite 800, Washington, DC 20036, and Anne L. Spangler, 3628 South 35th Street, Tacoma, WA 98409–3115.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 8, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–23138 Filed 10–18–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 12, 2004.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 18, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1010.

Form Number: IRS Form 1120–RIC.

Type of Review: Revision.

Title: U.S. Income Tax Return for Regulated Investment Companies.

Description: Form 1120–RIC is filed by a domestic corporation electing to be taxed as a RIC in order to report its income and deductions and to compute its tax liability. IRS uses form 1120–RIC to determine whether the RIC has correctly reported its income, deductions, and tax liability.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 3,277.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping—57 hr., 9 min.
Learning about the law or the form—20 hr., 43 min.
Preparing the form—36 hr., 30 min.
Copying, assembling, and sending the form to the IRS—4 hr., 1 min.

Frequency of response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 380,325 hours.

Clearance Officer: Paul H. Finger (202) 622–4078, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–23358 Filed 10–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th and Pennsylvania Avenue, NW., Washington, DC, on November 2, 2004 at 11 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee of The Bond Market Association (''Committee'').

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, section 10(d) and Public Law 103–202, 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, section 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, section 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, section 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions, financing estimates and technical charts. This briefing will give the press an opportunity to ask questions about financing projections and technical charts. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b. The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Jeff Huther, Director, Office of Debt Management, at (202) 622–1868.

parties cannot consummate this transaction until that date.

Dated: October 12, 2004.

Timothy Bitsberger,

Acting Assistant Secretary, Financial Markets.

[FR Doc. 04–23356 Filed 10–18–04; 8:45 am]

BILLING CODE 4810–25–M

Federal Register

Tuesday,
October 19, 2004

Part II

Department of Education

34 CFR Parts 75, 76, and 108
Equal Access to Public School Facilities for the Boy Scouts of America and Other Designated Youth Groups; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 75, 76, and 108

RIN 1870–AA12

Equal Access to Public School Facilities for the Boy Scouts of America and Other Designated Youth Groups

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to add a new part to title 34 of the Code of Federal Regulations and to amend 34 CFR parts 75 and 76 to implement the provisions of the Boy Scouts of America Equal Access Act. This Act directs the Secretary of Education, through the Office for Civil Rights, to ensure compliance with this new law. The proposed regulations would address equal access to public school facilities by the Boy Scouts of America and other designated youth groups.

DATES: Your comments must be postmarked or sent through the Internet on or before December 3, 2004.

ADDRESSES: Address all comments about these proposed regulations to Kenneth L. Marcus, Delegated the Authority of Assistant Secretary for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., room 6095 Potomac Center Plaza, Washington, DC 20202–1100. If you prefer to send your comments through the Internet, you may address them to us at the U.S. Government Web site: *http://www.regulations.gov*.

Or you may send your Internet comments to us at the following address: *boyscoutscomments@ed.gov*.

For all comments submitted, you should specify the subject as ''Boy Scouts Proposed Regulations Comments.''

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget (OMB) at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Sandra G. Battle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6125 Potomac Center Plaza, Washington, DC 20202–1100. Telephone: (202) 245–6767.

If you use a telecommunications device for the deaf (TDD), you may call 1–877–521–2172. For additional copies of this document, you may call the Customer Service Team for the Office for Civil Rights (OCR) at 1–800–421–3481. This notice of proposed rulemaking will also be available at the Department's Web site on the Internet at: *http://www.ed.gov/news/fedregister/proprule/index.html*.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 6128 Potomac Center Plaza, 550 12th Street, SW., Washington, DC, between the hours of 9:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays. If you are interested in reviewing the comments, we encourage you to contact the person listed under **FOR FURTHER INFORMATION CONTACT** in advance to schedule an appointment for inspecting the comments.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. If you use a TDD, you may call 1–877–521–2172.

Background

These proposed regulations would implement the Boy Scouts of America Equal Access Act. On January 8, 2002, the President signed into law the No Child Left Behind Act of 2001 (NCLB), Public Law 107–110, amending the Elementary and Secondary Education Act of 1965 (ESEA). Included in the amendments to the ESEA is the Boy Scouts of America Equal Access Act (Boy Scouts Act). The Boy Scouts Act applies to any public elementary school, public secondary school, local educational agency (LEA), or State educational agency (SEA) that has a designated open forum or limited public forum and that receives funds made available through the Department of Education (Department). Under this law, those entities may not deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) that wishes to conduct a meeting within the covered entity's designated open forum or limited public forum.

The Boy Scouts Act authorizes the Secretary to implement this law by issuing and securing compliance with rules or orders with respect to any covered public elementary school, public secondary school, LEA, or SEA that denies equal access or a fair opportunity to meet to, or discriminates against, any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) that wishes to conduct a meeting within the covered entity's designated open forum or limited public forum. The Boy Scouts Act also directs the Secretary, through OCR, to enforce this law in a manner consistent with the procedure used under section 602 of the Civil Rights Act of 1964 with respect to these covered entities. If the covered public school or agency does not comply with the Boy Scouts Act, it would be subject to the Department's enforcement actions.

On November 15, 2002, we published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (67 FR 69456) requesting comments from interested parties to assist us in developing proposed regulations. The comment period for the ANPRM closed on December 16, 2002. In response to the Secretary's invitation in the ANPRM, approximately two dozen parties submitted comments on issues to be considered in developing proposed regulations. The comments expressed a variety of opinions on the Boy Scouts Act and what should be included in regulations implementing this law. We considered these comments in developing this notice of proposed rulemaking.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Section 108.3 Definitions

a. Covered Entity

Statute: Section (b)(1) of the Boy Scouts Act (section 9525(b)(1) of the ESEA, as amended by NCLB) provides that this law applies to any public elementary school, public secondary school, LEA, or SEA that has a designated open forum or limited public forum and that receives funds made available through the Department.

Proposed Regulations: Proposed § 108.3 would create the term ''covered entity'' and define it to mean any public elementary school, public secondary school, LEA, or SEA that has a designated open forum or limited public forum and that receives funds made available through the Department.

Reason: Proposed § 108.3, for simplification, provides one term to be used when referring to the entities to which the Boy Scouts Act applies.

b. Designated Open Forum

Statute: Section (b)(1) of the Boy Scouts Act (section 9525(b)(1) of the ESEA, as amended by NCLB) uses the terms ''designated open forum'' and ''limited public forum.'' Section (d)(2) of the Boy Scouts Act defines ''limited public forum'' but does not define ''designated open forum.''

Proposed Regulations: Proposed § 108.3 would define ''designated open forum.''

Reason: The statute applies to public schools, LEAs, and SEAs that have a designated open forum or limited public forum. The statute defines when an elementary or secondary school has a limited public forum, but does not define when an elementary or secondary school has a designated open forum. For purposes of clarification, the proposed regulations contain a definition of ''designated open forum.''

Under this definition, a school retains control over its educational benefits and services, and does not create a designated open forum simply by inviting an outside group in to present information to the students. For instance, if a school, as part of its character education program, invites an outside group to put on a school assembly on saying no to drugs, that does not mean that the school has created a designated open forum and must allow any group officially affiliated with the Boy Scouts of America, or any other youth group listed in title 36 of the United States Code (as a patriotic society), to come into the school to do a presentation related to character education.

c. Limited Public Forum

Statute: Section (b)(1) of the Boy Scouts Act (section 9525(b)(1) of the ESEA, as amended by NCLB) uses the term ''limited public forum.'' Section (d)(2) of the Boy Scouts Act defines ''limited public forum.''

Proposed Regulations: Proposed § 108.3 would incorporate the statutory definition of ''limited public forum.''

Reason: By incorporating the statutory definition of this term, the regulations accurately reflect the requirements of the statute.

d. Outside Youth or Community Group

Statute: Section (d)(2) of the Boy Scouts Act (section 9525(d)(2) of the ESEA, as amended by NCLB) uses the term ''outside youth or community groups'' in the definition of ''limited public forum.''

Proposed Regulations: Proposed § 108.3 would define the term ''outside youth or community group,'' as the term appears in the definitions of ''designated open forum'' and ''limited public forum,'' to mean a group that is not affiliated with the school.

Reason: For purposes of clarification, the proposed regulations would define ''outside youth or community group'' to mean a youth or community group that is not affiliated with the school.

e. To Sponsor Any Group Officially Affiliated With the Boy Scouts of America; To Sponsor Any Group Officially Affiliated With Any Other Youth Group Listed in Title 36 of the United States Code (as a Patriotic Society)

Statute: Under section (b)(2) of the Boy Scouts Act (section 9525(b)(2) of the ESEA, as amended by NCLB), no school, agency, or a school served by an agency to which the Boy Scouts Act applies is required to sponsor any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society).

Proposed Regulations: Proposed § 108.3 would define the term ''To sponsor any group officially affiliated with the Boy Scouts of America'' as meaning to possess a community organization charter issued by the Boy Scouts of America. Proposed § 108.3 would define the term ''To sponsor any group officially affiliated with any other youth group listed in title 36 of the United States Code (as a patriotic society)'' to mean choosing to take whatever actions are required by that title 36 group to become a sponsor of that group.

Reason: The statute does not define either of these terms. Accordingly, proposed § 108.3 clarifies what it means to sponsor any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society). The first definition is supported by the legislative history of the Boy Scouts Act. During the legislative debate of the Boy Scouts Act, Senator Smith of Oregon stated: ''The Boy Scouts is a national institution with a national charter with this Government, and it is put out for any group that wants to sponsor it. They are called chartering institutions. Most of the chartering institutions are churches and synagogues. Some are police stations. Some may even be a school district.'' 147 Cong. Rec. 6259 (2001). We specifically request comment on these proposed definitions.

f. Youth Group

Statute: Section (d)(1) of the Boy Scouts Act (section 9525(d)(1) of the ESEA, as amended by NCLB) defines the term ''youth group.''

Proposed Regulations: Proposed § 108.3 incorporates the statutory definition of ''youth group.''

Reason: By incorporating the statutory definition of this term, the regulations would accurately reflect the requirements of the statute.

Section 108.4 Effect of State or Local Law

Statute: Under section (b)(1) of the Boy Scouts Act (section 9525(b)(1) of the ESEA, as amended by NCLB), no covered entity, notwithstanding any other provision of law, shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society).

Proposed Regulations: Proposed § 108.4 would explain that neither State nor local law would obviate or alleviate a covered entity's obligation to comply with the Boy Scouts Act and its implementing regulations.

Reason: Proposed § 108.4 reflects the statutory provision that covered entities must comply with the equal access and non-discrimination requirements without regard to any State or local law. A public school, LEA, or SEA that receives funds made available through the Department must comply with the

Boy Scouts Act, even if State or local law conflicts with the Boy Scouts Act.

Section 108.5 Compliance Obligations

Statute: Section (b)(2) of the Boy Scouts Act (section 9525(b)(2) of the ESEA, as amended by NCLB) provides that this law applies to any public elementary school, public secondary school, LEA, or SEA that has a designated open forum or limited public forum and that receives funds made available through the Department.

Proposed Regulations: Proposed § 108.5 would provide that the obligation of public elementary schools, public secondary schools, LEAs, and SEAs to comply with the Boy Scouts Act is not limited by the nature or extent of their authority to make decisions about the use of school facilities.

Reason: The Secretary recognizes that public schools, LEAs, or SEAs may not always have the independent authority to make decisions concerning the use of school facilities, and that other entities may be responsible for making those decisions. The statute, however, holds public schools, LEAs, and SEAs responsible for compliance with the Boy Scouts Act and does not condition their compliance obligation on whether they have the authority to make decisions about use of their school facilities. Proposed § 108.5 clarifies that the statute applies to covered public elementary schools, public secondary schools, LEAs, and SEAs regardless of their authority to make decisions about the use of school facilities.

Section 108.6 Equal Access

Statute: Under section (b)(1) of the Boy Scouts Act (section 9525(b)(1) of the ESEA, as amended by NCLB), no covered entity shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) that wishes to conduct a meeting within that covered entity's designated open forum or limited public forum for reasons including the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts of America or of the youth group listed in title 36 of the United States Code (as a patriotic society).

Proposed Regulations: Proposed § 108.6 would restate the statutory requirement. Proposed § 108.6(a) through (c) would clarify that the statutory requirement means that any group officially affiliated with the Boy Scouts of America or any youth group listed in title 36 of the United States Code (as a patriotic society) that wishes to conduct a meeting within that covered entity's designated open forum or limited public forum must be provided with—(a) Access to school premises and school facilities to conduct meetings; (b) the ability to communicate through the use of school-related means such as, but not limited to, bulletin board notices and literature distribution; and (c) access to students, and student information, for recruitment purposes. That access and ability to communicate must be provided on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups. Proposed § 108.6(d) would clarify that any group officially affiliated with the Boy Scouts of America or any youth group listed in title 36 of the United States Code (as a patriotic society) may be charged fees in connection with their use of school facilities provided the fees are based on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

Reasons: We have sought to clarify the nature of the access required by the statute. That access includes not only access to school facilities for meetings before, during, or after school, but also access to other school activities related to an intention by any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) to conduct a meeting within a covered entity's designated open forum or limited public forum. The types of access include, but are not necessarily limited to, means of communication and recruitment. However, in order to provide equal access under the Boy Scouts Act, any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) that wishes to conduct a meeting at the school must be provided such access and use of school-related means of communication on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups. We specifically request comment on this proposed standard.

We recognize the need to regulate in such a way as to ensure that public schools, LEAs, and SEAs continue to have flexibility to establish fees based on certain distinctions; for example, distinctions made between non-profit community groups and for-profit groups. However, in order to provide equal access under the Boy Scouts Act, any fees charged to any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) must be charged on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

The Boy Scouts Act does not require access, but rather equal access. Thus, if one or more outside youth or community groups are given access to a school activity, then any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) must be given access to that school activity. However, if a school or agency decides to deny access to a particular school activity to all outside youth or community groups, that decision would not violate the Boy Scouts Act. For instance, if a school decides that no outside youth or community groups that wish to hold meetings at the school may hold recruitment assemblies during school hours so that school hours can be devoted to instruction, then the Boy Scouts Act does not force that school to make an exception for any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society).

Access for recruitment under the Boy Scouts Act is not the same as NCLB's access for armed forces recruitment, provided under section 9528 of the ESEA, as amended by NCLB. We do not think the Boy Scouts Act authorizes the Department to incorporate these armed forces recruitment requirements into the Boy Scouts Act regulations. The armed forces recruitment requirements and the Boy Scouts Act are in two separate sections of NCLB, and nothing in NCLB indicates that one section applies to the other. Moreover, the armed forces recruitment requirements concern unique access by military recruiters or institutions of higher education to certain information about secondary school students. In contrast, the Boy Scouts Act concerns equal access by groups officially affiliated with the Boy Scouts of America and certain other patriotic youth organizations to public school facilities.

Of course, outside youth or community groups, including any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society), would not have access to education records (or personally identifiable information

contained therein), as defined by the Family Educational Rights and Privacy Act (FERPA), other than in accordance with the provisions of the FERPA. That law generally prohibits schools from disclosing personally identifiable information in a student's education record, unless the school obtains the consent of the student's parent or the eligible student (a student who is 18 years old or older or who attends a postsecondary institution).

Section 108.7 Voluntary Sponsorship

Statute: Under section (b)(2) of the Boy Scouts Act (section 9525(b)(2) of the ESEA, as amended by NCLB), no school, agency, or a school served by an agency to which the Boy Scouts Act applies is required to sponsor any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society).

Proposed Regulations: Proposed § 108.7 would repeat the statutory requirement.

Reasons: Proposed § 108.7 incorporates the statutory requirement. The proposed regulations, in § 108.3, would define the terms ''to sponsor any group officially affiliated with the Boy Scouts of America'' and ''to sponsor any group officially affiliated with any other youth group listed in title 36 of the United States Code (as a patriotic society).'' Reasons for these definitions are discussed previously under § 108.3 Definitions.

Section 108.8 Compliance Procedures

Statute: Section (c)(1) of the Boy Scouts Act (section 9525(c)(1) of the ESEA, as amended by NCLB) directs the Secretary, through OCR, to enforce this law in a manner consistent with the procedure used under section 602 of the Civil Rights Act of 1964.

Proposed Regulations: Proposed § 108.8 would adopt the procedural provisions applicable to title VI of the Civil Rights Act of 1964 (Title VI).

Reason: OCR uses the regulations found in 34 CFR parts 100 and 101 in enforcing Title VI. Rather than repeating the relevant sections of these Title VI regulations in the proposed regulations for the Boy Scouts Act, proposed § 108.8 simply adopts those relevant sections.

Sections 75.500 and 76.500 Federal Statutes and Regulations on Nondiscrimination

Statute: Under section (b)(1) of the Boy Scouts Act (section 9525(b)(1) of the ESEA, as amended by NCLB), no covered entity shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) that wishes to conduct a meeting within that covered entity's designated open forum or limited public forum for reasons including the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts of America or of the youth group listed in title 36 of the United States Code (as a patriotic society).

Proposed Regulations: Sections 75.500 and 76.500 list the Federal statutes and regulations on nondiscrimination with which grantees, under § 75.500, and States and subgrantees, under § 76.500, must comply. These regulations do not include the Boy Scouts Act among the listed Federal statutes and regulations on nondiscrimination. Proposed §§ 75.500(b) and 76.500(b) would provide that a covered entity as defined in § 108.3 also must comply with the nondiscrimination requirements of the Boy Scouts Act.

Reason: The proposed amendments to §§ 75.500 and 76.500 would add the Boy Scouts Act and the regulations in part 108 to the list of Federal statutes and regulations on nondiscrimination with which grantees and States and subgrantees that are covered entities under § 108.3 must comply.

Executive Order 12250

Pursuant to Executive Order 12250, which provides for the Attorney General to review proposed regulations implementing any provision of Federal statutory law that provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance, the Assistant Attorney General for Civil Rights has reviewed this notice of proposed rulemaking and approved it for publication.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The proposed regulations would not impose any specified costs. If recipients have to change their practices in order to meet the equal access and nondiscrimination requirements of the statute, they may incur some costs. Any costs, including costs to comply with information collection requirements, likely would be minimal. The potential benefits of this proposed regulatory action are that stakeholders would have easily accessible, codified, published regulations that clarify both the substantive obligations of the law and how the Department would enforce the law. The Boy Scouts Act provides for new obligations and requirements regarding access to school facilities. By engaging in rulemaking, we would be able to obtain input from stakeholders (including public schools, LEAs, SEAs, the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society), and parents) and other interested parties that will help us to develop clear and accessible regulations that advance the purpose of the statute and sufficiently inform stakeholders of their rights and responsibilities under the law. By developing regulations for use in enforcing the Boy Scouts Act, we also would be complying with the directive in the Boy Scouts Act to enforce the law in a manner consistent with the procedures used to enforce Title VI. The proposed regulations would incorporate the existing procedural sections of the Title VI regulations and, like the Title VI regulations, would clarify the substantive obligations of covered entities.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 108.6 Equal Access.)
- Could the description of the proposed regulations in the ''Supplementary Information'' section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The proposed regulations address equal access to school facilities and activities for the Boy Scouts of America and other specified youth organizations and would not have a significant economic impact on any entities.

Paperwork Reduction Act of 1995

Section 108.8 contains an information collection requirement. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of this section to OMB for its review.

Collection of Information: Assurances of Compliance

The collection of information consists of assurances that applicants for Federal financial assistance will comply with the requirements of the Boy Scouts Act. These proposed regulations would affect the following types of entities applying to the Department for Federal financial assistance: SEAs, LEAs, public elementary schools, and public secondary schools.

The Boy Scouts Act directs the Secretary, through OCR, to enforce this law in a manner consistent with the procedure used under Title VI. This procedure includes obtaining assurances of compliance with Title VI, under 34 CFR 100.4. Section 108.8 would adopt this Title VI regulatory provision.

This assurance would be collected on applications for Federal financial assistance, including formula and discretionary grants, from the Department. Because this assurance would simply be added to existing assurances already contained on applications for Federal financial assistance from the Department, we estimate that the annual reporting and recordkeeping burden for this collection of information will be negligible.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means 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. The proposed regulations in § 108.4 may have federalism implications, as defined in Executive Order 13132. We encourage State and local elected officials to review and provide comments on these proposed regulations.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects

34 CFR Part 75

Accounting, Administrative practice and procedure, Education, Grant programs—Education, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 76

Administrative practice and procedure, Compliance, Eligibility, Grant administration, Reporting and recordkeeping requirements.

34 CFR Part 108

Boy Scouts of America, Education, Equal access, Reporting and recordkeeping requirements.

Dated: October 7, 2004.

Rod Paige,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 75 and 76 of, and to add a new part 108 to, title 34 of the Code of Federal Regulations to read as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

2. Section 75.500 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows.

§ 75.500 Federal statutes and regulations on nondiscrimination.

* * * * *

(b) A grantee that is a covered entity as defined in § 108.3 of this title shall comply with the nondiscrimination requirements of the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 CFR part 108.

* * * * *

PART 76—STATE–ADMINISTERED PROGRAMS

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

Authority: 20 U.S.C. 1221e–3, 3474, 6511(a), and 8065a, unless otherwise noted.

4. Section 76.500 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 76.500 Federal statutes and regulations on nondiscrimination.

* * * * *

(b) A State or subgrantee that is a covered entity as defined in § 108.3 of this title shall comply with the nondiscrimination requirements of the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 CFR part 108.

* * * * *

5. Add part 108 to read as follows:

PART 108—EQUAL ACCESS TO PUBLIC SCHOOL FACILITIES FOR THE BOY SCOUTS OF AMERICA AND OTHER DESIGNATED YOUTH GROUPS

Sec.

Authority: 20 U.S.C. 7905, unless otherwise noted.

§ 108.1 Purpose.

The purpose of this part is to implement the Boy Scouts of America Equal Access Act (Boy Scouts Act).

(Authority: 20 U.S.C. 7905)

§ 108.2 Applicability.

This part applies to any public elementary school, public secondary school, local educational agency, or State educational agency that has a designated open forum or limited public forum and that receives funds made available through the Department.

(Authority: 20 U.S.C. 7905)

§ 108.3 Definitions.

(a) The following definitions apply to this part:

Boy Scouts Act means the Boy Scouts of America Equal Access Act, section 9525 of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Public Law 107–110, 115 Stat. 1425, 1981–82 (20 U.S.C. 7905).

Boy Scouts of America means the organization named ''Boy Scouts of America,'' which has a Federal charter and which is listed as an organization in title 36 of the United States Code (Patriotic and National Observances, Ceremonies, and Organizations) in Subtitle II (Patriotic and National Organizations), Part B (Organizations), Chapter 309 (Boy Scouts of America).

Covered entity means any public elementary school, public secondary school, local educational agency, or State educational agency that has a designated open forum or limited public forum and that receives funds made available through the Department.

Designated open forum means the following for the purposes of these regulations: An elementary school or secondary school has a designated open forum whenever the school involved designates a time and place for one or more outside youth or community groups to meet on school premises or in school facilities, including during the hours in which attendance at the school is compulsory, for reasons other than to provide the school's educational benefits or services.

Elementary school means an elementary school as defined by section 9101(18) of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Public Law 107–110, 115 Stat. 1425, 1958 (20 U.S.C. 7801).

Limited public forum means the following for purposes of these regulations: An elementary school or secondary school has a limited public forum whenever the school involved grants an offering to, or opportunity for, one or more outside youth or community groups to meet on school premises or in school facilities before or after the hours during which attendance at the school is compulsory.

Local educational agency means a local educational agency as defined by section 9101(26) of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Public Law 107–110, 115 Stat. 1425, 1961 (20 U.S.C. 7801).

Outside youth or community group, as that term appears in the regulatory definitions of designated open forum and limited public forum, means a youth or community group that is not affiliated with the school.

Secondary school means a secondary school as defined by section 9101(38) of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Public Law 107–110, 115 Stat. 1425, 1965 (20 U.S.C. 7801).

State educational agency means a State educational agency as defined by section 9101(41) of the Elementary and Secondary Education Act of 1965, as amended by section 901 of the No Child Left Behind Act of 2001, Public Law 107–110, 115 Stat. 1425, 1965 (20 U.S.C. 7801).

Title 36 of the United States Code (as a patriotic society) means title 36 (Patriotic and National Observances, Ceremonies, and Organizations), Subtitle II (Patriotic and National Organizations).

To sponsor any group officially affiliated with the Boy Scouts of America means to possess a community organization charter issued by the Boy Scouts of America.

To sponsor any group officially affiliated with any other youth group listed in title 36 of the United States Code (as a patriotic society) means choosing to take whatever actions are required by that title 36 group to become a sponsor of that group.

Youth group means any group or organization intended to serve young people under the age of 21.

(b) The following terms defined in 34 CFR 100.13 apply to this part.

Department
Facility

(Authority: 20 U.S.C. 7905)

§ 108.4 Effect of State or local law.

The obligation to comply with the Boy Scouts Act and this part is not obviated or alleviated by any State or local law or other requirement.

(Authority: 20 U.S.C. 7905)

§ 108.5 Compliance obligations.

The obligation of public elementary schools, public secondary schools, local educational agencies, and State educational agencies to comply with the Boy Scouts Act is not limited by the nature or extent of their authority to make decisions about the use of school facilities.

(Authority: 20 U.S.C. 7905)

§ 108.6 Equal access.

No covered entity shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) that wishes to conduct a meeting within that covered entity's designated open forum or limited public forum. No covered entity shall deny that access or opportunity or discriminate for reasons including the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts of America or of the youth group listed in title 36 of the United States Code (as a patriotic society). Activities covered include, but are not necessarily limited to, the following:

(a) *Meetings.* Any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) must be given access to school premises and school facilities to conduct meetings on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

(b) *Means of communication.* Any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) must be allowed to use school-related means of communication on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups. These means of communication include, but are not limited to, bulletin board notices and literature distribution.

(c) *Recruitment.* Any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) must be allowed access to students, and student information, for recruitment purposes on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

(d) *Fees.* Any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society) may be charged fees in connection with conducting meetings on school premises or in school facilities, using school-related means of communication, or conducting recruitment activities, but only if the fees are charged on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

(Authority: 20 U.S.C. 7905)

§ 108.7 Voluntary sponsorship.

Nothing in this part shall be construed to require any school, agency, or a school served by an agency to sponsor any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code (as a patriotic society).

(Authority: 20 U.S.C. 7905)

§ 108.8 Compliance procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. Those procedures are found in 34 CFR 100.4, 100.6 through 100.11, 100.13(a) through (f), and (h) through (k), and 34 CFR part 101.

(Authority: 20 U.S.C. 7905)

[FR Doc. 04–23290 Filed 10–18–04; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Tuesday,
October 19, 2004

Part III

Department of the Treasury

Fiscal Service

31 CFR Part 240

Indorsement and Payment of Checks Drawn on the United States Treasury; Interim Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 240

RIN 1510–AA99

Indorsement and Payment of Checks Drawn on the United States Treasury

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim rule with request for comment.

SUMMARY: The Financial Management Service (FMS) is publishing for comment an interim rule amending 31 CFR part 240 (part 240) in order to permit financial institutions to present Treasury checks for payment by providing an electronic image of the check in lieu of a paper check. The rule establishes the procedures that the U.S. Department of the Treasury (Treasury) will follow to invoke an indemnity arising under the Check Clearing for the 21st Century Act for a breach of warranty or in situations in which the receipt of a substitute Treasury check rather than the original check results in a loss to the Federal Government. The rule also establishes a similar indemnity and procedures when an electronic image of a Treasury check is utilized. In addition, the rule requires that financial institutions that create substitute Treasury checks or electronic images of Treasury checks prevent unauthorized access to the underlying paper checks until they are destroyed.

DATES: *Effective Date:* This rule is effective October 28, 2004.

Comment Date: Comments on the interim rule are due on or before January 18, 2005.

ADDRESSES: You can download the interim rule at the following World Wide Web address: *http://www.fms.treas.gov/checkclaims/regulations.html.* You may also inspect and copy the interim rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1318, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

You may submit comments on the interim rule by any of the following methods: *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically. *FMS Web site:* Go to *http://www.fms.treas.gov/checkclaims/regulations.html* and follow the instructions for sending your comments electronically. *Email:* You may email your comments to *check21@fms.treas.gov. Mail:* You may mail your comments to FMS, 3700 East West Highway, Attention: Ronald Brooks, Room 725–D, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Ronald Brooks, Senior Program Analyst, at 202 874–7573 or *ronald.brooks@fms.treas.gov;* Natalie H. Diana, Senior Counsel, at 202 874–6680 or *natalie.diana@fms.treas.gov;* or William Erle, Attorney-Advisor, at 202 874–6975 or *william.erle@fms.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2003, Congress enacted the Check Clearing for the 21st Century Act, 12 U.S.C. 5001–5018, applicable portions of which take effect on October 28, 2004 (Check 21 Act). The Check 21 Act creates a new negotiable instrument called a substitute check, which is a paper reproduction of an original check that contains an image of the front and back of the original check and is suitable for automated processing in the same manner as the original check. Under the Check 21 Act, a substitute check is the legal equivalent of the original check for all purposes and all persons. When the Check 21 Act takes effect, financial institutions will be able to present substitute checks to Treasury for payment in lieu of original Treasury checks. Although the Check 21 Act obviates the need for physical transfer of original checks, it does not make electronic check images legally equivalent to original checks. Thus, financial institutions will not be able to exchange checks electronically and eliminate the physical presentment of paper items except where they have an agreement with the paying bank to do so.

FMS strongly supports the underlying goal of the Check 21 Act, which is to modernize the U.S. payments system by facilitating the electronic exchange of images for presentment. FMS believes that giving financial institutions the option of presenting for payment an electronic image of a Treasury check rather than the original check or a substitute check will enhance the efficiency of processing Treasury checks. FMS therefore is creating in the interim rule a legal framework to support the presentment of electronic images of Treasury checks without the need for subsequent delivery of original or substitute checks. The interim rule does not require electronic image presentment of Treasury checks, but makes this option possible for those financial institutions that wish to present Treasury checks in this manner.

The interim rule establishes the rights and obligations of financial institutions that present electronic images to Treasury. The legal framework established by the rule mirrors the terms and conditions established by the Check 21 Act pursuant to which substitute checks are treated as the legal equivalent of original checks, and follows the Check 21 Act's general principles. For example, the interim rule is structured so that a loss associated with an electronic image will be borne by the financial institution that created the image, in keeping with the Check 21 Act principle that a loss associated with a substitute check is to borne by the party that caused the problem with the substitute check.

In contrast to the Check 21 Act, which establishes the legal equivalence of substitute checks for all persons and all purposes, the interim rule establishes the legal equivalence of electronic checks only as between Treasury and a financial institution that presents an electronic image of a Treasury check to Treasury for payment. The rule does not create for financial institutions the right to transfer, return or present an electronic image of a Treasury check to any other person.

In addition to establishing a framework for the presentment of electronic images of Treasury checks, the interim rule also establishes certain procedures relating to the processing of substitute Treasury checks created pursuant to the Check 21 Act. Under the Check 21 Act, a financial institution that for consideration transfers, presents or returns a substitute check makes certain warranties and indemnities with respect to the check. The interim rule sets forth the procedures that Treasury will follow if there is a breach of one of these warranties, as well as the procedures that apply if the Federal government incurs a loss due to the receipt of the substitute check rather than the original check.

Finally, the interim rule requires that a financial institution that creates a substitute Treasury check or electronic image of a Treasury check prevent unauthorized access to the paper check that was truncated if the financial institution chooses to retain the check rather than to destroy it. The interim rule does not dictate the destruction of Treasury checks that are truncated, or otherwise limit or curtail the discretion afforded to banks under the Check 21 Act to destroy or retain original Treasury checks. However, in light of the important public interest in

ensuring that information on Treasury checks is not used for fraudulent purposes, the rule provides that checks that are truncated and retained must be stored in a manner consistent with federal banking agency guidelines for safeguarding customer information.

FMS specifically requests comment on whether this provision of the interim rule is necessary. For example, if financial institutions expect to routinely apply their existing customer information security procedures to all truncated checks, then a safekeeping provision specific to truncated Treasury checks may be unnecessary. In addition, FMS requests comment on whether this requirement will be burdensome for financial institutions, or in any way interfere with or add costs to the creation of substitute checks.

FMS also requests comment on whether, in addition to requiring the physical safekeeping of truncated checks, FMS should take steps to restrict the use of information appearing on truncated checks. FMS is concerned not only with the potential fraudulent use of check information, but also that this information could be used by financial institutions or other entities in ways that FMS believes are inappropriate, such as for marketing or other commercial purposes. Financial privacy laws that generally restrict the use and disclosure of consumer information by financial institutions contain exceptions that may permit the use of such information by a financial institution or its affiliates for marketing or other purposes. FMS is concerned that the use of Treasury check information in this manner could undermine the public's confidence in the integrity and security of Treasury check information, or be perceived as intrusive. FMS requests comment on whether there is a need to prohibit financial institutions from making truncated paper checks available to third parties, and from disclosing or using information on the checks for commercial or business purposes.

Section-by-Section Analysis

A number of sections and paragraphs have been revised to reflect renumbering, but do not have substantive changes. The Section-by-Section analysis discusses substantive changes to the regulation.

Section 240.1 Scope of Regulations

New paragraph (c) of § 240.1 provides that nothing in the regulation supercedes the rights or obligations of Treasury or any other person that are set forth in the Federal Reserve's Regulation CC, 12 CFR part 229, with respect to substitute checks. The purpose of this paragraph is to clarify that provisions of part 240 relating to substitute checks do not displace any provision of Regulation CC or the Check 21 Act. For example, the Check 21 Act and Regulation CC provide that a warranty claim or indemnity claim on a substitute check must be brought within one year of the date on which the cause of action accrues. 12 CFR 229.56(c). A cause of action accrues as of the date on which the injured party first learns, or reasonably should have learned, of the facts and circumstances giving rise to the cause of action. *Id.* It is possible that Treasury could learn of facts giving rise to a substitute check claim after the expiration of the reclamation deadline, but within the Check 21 deadline, as illustrated by the following example: If a Treasury substitute check representing a benefit payment were presented and paid on 1/1/05, and Treasury learned on 2/2/06 that the payee had died before the check was issued, Treasury would be unable to institute a reclamation action due to the expiration of the one-year period beginning on the date the check was processed for payment. However, if the original check were not available and it were necessary to examine the original check in order, for example, to support a legal action to recover funds from the payee's spouse by proving that the payee's spouse had forged the payee's indorsement, Treasury would be within the deadline for bringing a Check 21 indemnity claim, i.e., one year beginning on 2/2/06, when the cause of action accrued. Paragraph (c) is intended to make it clear that although Treasury could not pursue the claim through the reclamation process, that deadline does not prevent Treasury from pursuing the claim outside the reclamation process.

As another example, Regulation CC provides that a loss resulting in whole or in part from an indemnified party's negligence shall reduce the amount recoverable by the indemnified party. 12 CFR 229.53(b)(2). Although part 240 doesn't address comparative negligence for losses arising from substitute checks, this defense could be available to a financial institution in connection with a reclamation or declination of a substitute check.

Section 240.2 Definitions

Paragraph (d) contains a revised definition of ''check'' that makes it clear that the term check includes not only an original paper check issued by Treasury, but also a substitute check or an electronic check relating to an original check.

Paragraph (l) is revised to provide a definition of ''electronic check.'' An electronic check is defined as an electronic image of a Treasury check, together with information describing the check, that meets the technical requirements for sending electronic items to a Federal Reserve Bank as set forth in the Federal Reserve Banks' operating circulars. The image need not be created directly from the original check in order to qualify as an electronic check for purposes of part 240. If an original check is truncated and replaced with a substitute check, and the substitute check is subsequently imaged and the image is presented to Treasury for payment, the image will constitute an electronic check.

Paragraph (w) defines an ''original check'' to mean the first paper check drawn on the United States Treasury with respect to a particular payment transaction.

Paragraph (bb) revises the definition of ''reasonable efforts'' in existing paragraph (z) to reflect the fact that the Treasury watermark, which appears on authentic original checks issued by Treasury, may not appear on a substitute check or an electronic check. Because the watermark may not survive truncation, a reclamation debtor's obligation to verify the existence of the watermark does not extend to a substitute check or electronic check presented to the reclamation debtor.

Paragraph (hh) provides a definition of ''substitute check'' for purposes of part 240. The definition is identical to the definition of substitute check in Regulation CC, except that the part 240 definition is more narrow in that it defines a substitute check as a paper reproduction of a Treasury check rather than a paper reproduction of any check. The term ''substitute check'' for purposes of part 240 has a different meaning than the term ''substitute check'' as used in 31 U.S.C. 3331 and our regulation at 31 CFR part 248. For purposes of 31 U.S.C. 3331 and 31 CFR part 248, a substitute check is a check issued by Treasury to replace a Treasury check that has been lost, stolen, destroyed or defaced. The definition of ''substitute check'' in paragraph (hh) does not apply to the term ''substitute check'' as used in 31 U.S.C. 3331 or 31 CFR part 248.

Paragraph (kk) defines ''truncate'' as the removal of a paper check (whether the check is an original check or a substitute check) from the forward collection or return process and the replacement of that check with either a substitute check or an electronic check.

Section 240.3 Electronic Checks and Substitute Checks

Section 240.3 provides that an electronic check is the legal equivalent of an original check or a substitute check for purposes of part 240 if the presenting bank provides the guarantees described in § 240.4 and if the electronic check accurately represents all of the information on the front and back of the check that the presenting bank truncated. Because an electronic check is legally equivalent to an original or substitute check for purposes of part 240, a financial institution may effect presentment of a Treasury check by presenting an electronic check without subsequent delivery of the original check or a substitute check. Financial institutions may decide whether to retain or destroy paper checks that are truncated to create electronic checks.

The legal equivalence of electronic checks arising under paragraph (a) exists only as between Treasury and a financial institution that presents an electronic image of a Treasury check to Treasury for payment. The rule does not create for financial institutions the right to transfer, return or present an electronic image of a Treasury check to any other person. For example, Treasury may return a check to a presenting bank if the one-year limit on payability has expired or if the check is not payable because it was issued after the payee's death. If that check was presented to Treasury in the form of an electronic check, Treasury may effect the return by using an electronic check. However, part 240 does not give the presenting bank the right to return the check to the depositor using an electronic image. The presenting bank will need to return either the original check or a substitute check to the depositor unless the bank has the right, by agreement with the depositor, to make the return using an electronic image.

The legal equivalence of substitute checks is not addressed in part 240 because legal equivalence is established by the Check 21 Act and addressed in Regulation CC.

Paragraph (b) requires financial institutions that create substitute checks or electronic checks to prevent unauthorized access to paper checks that are truncated by storing the checks, until their destruction, in a manner consistent with federal banking agency guidelines for safeguarding customer information. The term ''person'' in this context is not intended to include a financial institution's own employees or agents who handle the check in the normal course of processing or bank operations. For example, a financial institution is not prohibited from making truncated checks available to a vendor or contractor hired by a bank to shred or store the checks.

The phrase ''federal banking agency guidelines for safeguarding customer information'' in paragraph (b) refers to guidelines that are issued from time to time by the federal banking agencies (the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation) and the Board of Governors of the Federal Reserve System, and the National Credit Union Administration (NCUA). In 2001 the federal banking agencies and the NCUA issued substantively identical guidelines establishing standards for physical safeguards for customer records and information. *See* Interagency Guidelines Establishing Standards For Safeguarding Information (February 1, 2001), 66 FR 8616 and Guidelines for Safeguarding Member Information (January 30, 2001), 66 FR 8152–01 (Interagency Guidelines). The Interagency Guidelines, among other things, establish standards that financial institutions must follow to protect against unauthorized access to, or use of, customer information that could result in substantial harm or inconvenience to any customer. The standards include physical safeguarding of customer records. Because the federal banking agencies indicated that they plan to issue guidance and other revisions to applicable regulations in order to supplement the Interagency Guidelines, paragraph (b) refers generically to federal banking agency guidelines. *See* 66 FR 8616, 8618.

Currently, Treasury checks that have been negotiated are stored securely by Treasury until their destruction. This practice prevents the misappropriation of the checks or the misuse of information on the checks. Because Treasury will not have possession of Treasury checks that are truncated, FMS is concerned that the checks, or the information on them, could be used in ways that would raise significant concerns for Treasury and check recipients. Treasury checks contain not only the names and addresses of Federal benefit recipients, but also, following negotiation, may contain other identifying information such as payees' bank account numbers, driver's license numbers and Social Security numbers. FMS is concerned that the failure to safeguard this information could lead to identity theft. Therefore, FMS believes that it is critical that Treasury checks that are truncated be stored securely, and that access to such checks be restricted.

Although financial institutions are subject to statutory and regulatory requirements to safeguard customer information, FMS does not believe that these requirements are adequate to protect against potential misuse of Treasury checks that are truncated. For example, financial institutions that create substitute checks may not have a ''customer'' relationship with Treasury check payees, meaning that the procedures that financial institutions must follow to protect against unauthorized access to, or use of, customer information would not apply. For purposes of the Interagency Guidelines, the definition of ''customer'' is limited to a consumer who has established a continuing relationship with a financial institution. Check recipients who cash their checks at banks where they do not have accounts, as well as recipients who cash checks at check casher or other non-bank locations, may not be viewed to be customers for purposes of financial institution privacy requirements because they may not have a continuing relationship with the depository bank.

In enacting the Check 21 Act, Congress expressly recognized the broad and long-standing authority of the Secretary of the Treasury to establish and administer the rules that govern payments disbursed by Treasury, including Treasury checks. *See* S. Rep. No. 108–79, at 6. The Check 21 Act does not affect the Secretary's authority to regulate Treasury checks, to the extent such regulations are not inconsistent with the Check 21 Act. *Id.* FMS is exercising this authority to ensure the continued security of Treasury checks in a manner that is consistent with the Check 21 Act.

The Check 21 Act is silent with regard to the disposition of original checks that are truncated by financial institutions. Accordingly, under the Check 21 Act, financial institutions that create substitute checks may choose whether to retain or destroy the original checks. Paragraph (b) preserves the discretion of financial institutions that create substitute checks to destroy or retain the original Treasury checks. FMS does not believe that requiring financial institutions to prevent unauthorized access to truncated Treasury checks by storing them in a manner consistent with their usual procedures for safeguarding customer information should in any way interfere with, burden or add costs to the creation of substitute checks. As discussed above, financial institutions that create substitute checks will be required to prevent unauthorized access to most original checks that they retain pursuant

to the Interagency Guidelines. The interim rule operates to ensure that certain Treasury checks that might otherwise be treated as non-customer items will be included in each financial institution's usual customer record security procedures.

Section 240.4 Presentment Guarantees

Paragraph (e) provides that a bank that presents an electronic check for payment makes certain presentment guarantees that parallel the warranty and indemnity provisions for substitute checks set forth in §§ 229.52 and 229.53 of Regulation CC.

Paragraph (f) incorporates in part 240, as presentment guarantees, the substitute check warranty and indemnity provisions of Regulation CC and thereby establishes, in conjunction with reclamation provisions, the process by which Treasury will invoke the substitute check indemnity provided by § 229.53 of Regulation CC. Paragraph (f) does not limit or expand Regulation CC's warranty and indemnity provisions, but simply frames those provisions as presentment guarantees so as to make the procedure for invoking a substitute check indemnity part of the declination or reclamation process.

A breach of either of these warranties will be a basis for reclamation of the check pursuant to new § 240.8(a) or declination of the check pursuant to new § 240.6(c).

Section 240.6 Provisional Credit; First Examination; Declination; Final Payment

Existing § 240.5 is redesignated as § 240.6, and paragraph (c) of this section is revised by the addition of paragraph (c)(3), which provides that Treasury may decline payment on a check if Treasury has already received presentment of, and made payment on, a substitute check, electronic check or original check relating to the check being presented, such that Treasury is being requested to make payment on a check it has already paid. In addition, new paragraph 240.6(c)(4) provides that, in the case of an electronic check, Treasury may decline payment if it cannot determine whether the check contains a material defect or alteration without examining the original check or a better quality image of the check and if Treasury is on notice of a question of law or fact about whether the check is properly payable. New paragraph 240.6(c)(5) allows Treasury to decline payment in the case of a substitute check as to which Treasury has a warranty or indemnity claim arising under 12 CFR 229.52 or 229.53.

FMS does not anticipate that there will be many situations in which an original check will be required in order to determine whether a substitute check or an electronic check is properly payable. Nevertheless, in our experience, there are a small number of cases in which the original check must be examined in order to assess, for example, the pen pressure and other signature characteristics that are used to determine the authenticity of an endorsement.

Section 240.7 Declination Protest

Existing § 240.6 is redesignated as § 240.7, and paragraph (b) of this section is revised by the addition of paragraphs (b)(5) and (b)(6). Paragraph (b)(5) provides that a presenting bank may offer evidence that the check has not already been presented to, and paid by, Treasury, following Treasury's declination of the check for this reason. Paragraph (b)(6) provides that a presenting bank may offer an original check or a copy of the check that is sufficient to support a determination that the check does not contain a material defect or alteration where a check is declined for this reason. The provision of an original check will be sufficient to successfully protest a declination based on § 240.6(c)(4). If the original check is not available, the presenting bank can provide a better image, if available, but a better image may not in all cases be sufficient to successfully protest a declination based on § 240.6(c)(4).

Section 240.9 Reclamation Procedures; Reclamation Protests

Existing § 240.8 is redesignated as § 240.9, and paragraph (b)(2) of this section is revised by the addition of paragraphs (b)(2)(v) and (b)(2)(vi), which correspond to the new presentment guarantees at § 240.4(e) and (f) relating to double presentment and adequacy of image quality. These reclamation protest provisions parallel the declination protest provisions at § 240.7(b)(5) and (6).

Section 240.12 Processing of Checks

Existing § 240.11 is redesignated as § 240.12, and paragraph (a)(3)(iii) of this section is revised by deleting the word ''original'' from the term ''original checks.'' Paragraph (a)(3)(iv) is revised by addition of a reference to substitute checks.

Procedural Matters

Executive Order 12866, Regulatory Planning and Review

It has been determined that this interim rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Clarity of the Regulations

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this interim rule easier to understand.

Notice and Comment and Effective Date

We find that good cause exists for issuing the interim rule without prior notice and comment and for dispensing with the delayed effective date required by 5 U.S.C. 553. Under the Administrative Procedure Act, an agency is permitted to issue a rule without prior notice and comment when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest. 5 U.S.C. 553(b)(B). An agency also is permitted to publish a rule with an effective date of less than 30 days when the agency finds good cause for doing so. 5 U.S.C. 553(d). The publication of this rule as an interim rule with an effective date of less than 30 days will ensure that procedures are in place to support the operation of the Check 21 Act's warranties and indemnities with respect to Treasury checks when the Check 21 Act takes effect on October 28, 2004. Publishing this rule as an interim rule with an October 28, 2004 effective date also will allow financial institutions the option of using electronic checks as an alternative to substitute Treasury checks immediately upon the effective date of the Check 21 Act.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act do not apply. Nevertheless, to assist small business entities in understanding the implications of the interim rule, the following discussion explains why the rule will not have a significant impact on a substantial number of small business entities.

The interim rule applies to all financial institutions, regardless of their size. The revisions to part 240 in this interim rule permit, but do not require, financial institutions to present Treasury checks for payment by providing an electronic image of the check in lieu of a paper check. Financial institutions that choose to create electronic images of Treasury checks are required to store the paper checks that are truncated, until their destruction, in a manner consistent with federal

banking agency guidelines for safeguarding customer information. No financial institution is required to create or accept electronic images of Treasury checks and therefore no cost or burden is imposed on any financial institution as a result of the electronic check image provisions of this rule.

The rule also should not result in any significant costs for financial institutions that choose to create substitute checks as permitted by the Check 21 Act. The interim rule establishes the procedures that Treasury will follow to invoke an indemnity arising from a breach of a substitute check warranty or in situations in which the receipt of a substitute Treasury check rather than the original check results in a loss to the Federal Government. The rule does not create this indemnity, which is a statutory right arising under the Check 21 Act. The rule simply incorporates a process for invoking the indemnity into Treasury's existing declination and reclamation procedures.

Moreover, the requirement that financial institutions safeguard truncated Treasury checks by storing them in accordance with their usual procedures should not significantly increase the cost of creating substitute checks for financial institutions of any size. All financial institutions are already required to have in place customer information security programs, and financial institutions that choose to create substitute checks will be required under existing law and regulation to prevent unauthorized access to customer checks that they truncate. The interim rule requires financial institutions to apply their existing customer information security programs to certain Treasury checks that might otherwise fall outside the application of those laws and regulations. The rule does not require that financial institutions modify their existing programs, or require financial institutions to retain original checks for any period of time or in any specified manner.

List of Subjects in 31 CFR Part 240

Banks, Banking, Checks, Counterfeit checks, Federal Reserve system, Forgery, Guarantees.

Authority and Issuance

■ For the reasons stated in the preamble, Part 240 of title 31 is revised to read as follows:

PART 240—INDORSEMENT AND PAYMENT OF CHECKS DRAWN ON THE UNITED STATES TREASURY

General Provisions

Indorsement of Checks

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 321, 3327, 3328, 3331, 3334, 3343, 3711, 3712, 3716, 3717; 332 U.S. 234 (1947); 318 U.S. 363 (1943).

General Provisions

§ 240.1 Scope of regulations.

(a) The regulations in this part prescribe the requirements for indorsement and the conditions for payment of checks drawn on the United States Treasury. These regulations also establish procedures for collection of amounts due the United States Treasury based on claims arising from the breach of presentment guarantees by presenting banks and other indorsers of Treasury checks when checks bearing material defects or alterations or forged disbursing officer (drawer) signatures are presented for payment and are paid.

(b) Standards contained in this regulation supersede existing Federal common law to the extent that they are inconsistent with Federal common law rules relating to counterfeit checks. Under the provisions of this regulation, the risk of loss on certain counterfeit checks is placed on presenting banks and other indorsers unless Treasury fails to timely reclaim on a check payment in accordance with 31 U.S.C. 3712(a) and § 240.8 of this regulation. Treasury will reclaim on counterfeit checks that are deemed paid under § 240.6(d) of this regulation when a presenting bank or other indorser fails to make all reasonable efforts to ensure that a check is an authentic Treasury check.

(c) Nothing in this regulation supercedes the rights or obligations of Treasury or any other person that are set forth in Regulation CC, 12 CFR part 229, with respect to substitute checks, as defined therein.

§ 240.2 Definitions.

(a) *Administrative offset* or *offset,* for purposes of this section, has the same meaning as defined in 31 U.S.C. 3701(a)(1) and 31 CFR part 285.

(b) *Agency* means any agency, department, instrumentality, office, commission, board, service, or other establishment of the United States authorized to issue Treasury checks or for which checks drawn on the United States Treasury are issued.

(c) *Certifying agency* means an agency authorizing the issuance of a payment by a disbursing official in accordance with 31 U.S.C. 3325.

(d) *Check or checks* means an original check or checks; an electronic check or checks; or a substitute check or checks.

(e) *Check payment* means the amount paid to a presenting bank by a Federal Reserve Bank.

(f) *Counterfeit check* means a document that purports to be an authentic check drawn on the United States Treasury, but in fact is not an authentic check.

(g) *Days* means calendar days. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or Federal holiday; the first day is not included. For example, if a reclamation was issued on July 1, the 90 day protest period under § 240.9(b) would begin on July 2. If the 90th day fell on a Saturday, Sunday or Federal holiday, the protest would be accepted if received on the next business day.

(h) *Declination* means the process by which Treasury refuses to make final payment on a check, *i.e.*, declines payment, by instructing a Federal Reserve Bank to reverse its provisional credit to a presenting bank.

(i) *Declination date* means the date on which the declination is issued by Treasury.

(j) *Disbursing official* means an official, including an official of the Department of the Treasury, the Department of Defense, any Government corporation (as defined in 31 U.S.C. 9101), or any official of the United States designated by the Secretary of the Treasury, authorized to disburse public money pursuant to 31 U.S.C. 3321 or another law.

(k) *Drawer's signature* means the signature of a disbursing official placed on the front of a Treasury check as the drawer of the check.

(l) *Electronic check* means an electronic image of a check drawn on the United States Treasury, together with information describing that check, that meets the technical requirements for sending electronic items to a Federal Reserve Bank as set forth in the Federal Reserve Banks' operating circulars.

(m) *Federal Reserve* Bank means a Federal Reserve Bank (FRB) or a branch of a Federal Reserve Bank.

(n) *Federal Reserve Processing Center* means a Federal Reserve Bank center that images Treasury checks for archiving check information and transmitting such information to Treasury.

(o) *Financial institution* means:

(1) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(2) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(3) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(4) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or any credit union which is eligible to make application to become an insured credit union under section 201 of such Act (12 U.S.C. 1781);

(5) Any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) which is an insured depositary institution (as defined in such Act) (12 U.S.C. 1811 *et seq.*) or is eligible to apply to become an insured depositary institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(6) Any financial institution outside of the United States if it has been designated by the Secretary of the Treasury as a depositary of public money and has been permitted to charge checks to the General Account of the United States Treasury.

(p) *First examination* means Treasury's initial review of a check that has been presented for payment. The initial review procedures, which establish the authenticity and integrity of a check presented to Treasury for payment, may include reconciliation; retrieval and inspection of the check or the best available image thereof; and other procedures Treasury deems appropriate to specific circumstances.

(q) *Forged or unauthorized drawer's signature* means a drawer's signature that has been placed on the front of a Treasury check by a person other than:

(1) A disbursing official; or

(2) A person authorized to sign on behalf of a disbursing official.

(r) *Forged or unauthorized indorsement* means:

(1) An indorsement of the payee's name by another person who is not authorized to sign for the payee; or

(2) An indorsement of the payee's name made by another person who has been authorized by the payee, but who has not indorsed the check in accordance with § 240.4 and §§ 240.13 through 240.17; or

(3) An indorsement added by a financial institution where the financial institution had no authority to supply the indorsement; or

(4) A check bearing an altered payee name that is indorsed using the payee name as altered.

(s) *Guarantor* means a financial institution that presents a check for payment and any prior indorser(s) of a check.

(t) *Material defect or alteration* means:

(1) The counterfeiting of a check; or

(2) Any physical change on a check, including, but not limited to, a change in the amount, date, payee name, or other identifying information printed on the front or back of the check (but not including a forged or unauthorized drawer's signature); or

(3) Any forged or unauthorized indorsement appearing on the back of the check.

(u) *Minor* means the term minor as defined under applicable State law.

(v) *Monthly statement* means a statement prepared by Treasury which includes the following information regarding each outstanding reclamation:

(1) The reclamation date;

(2) The reclamation number;

(3) Check identifying information; and

(4) The balance due, including interest, penalties, and administrative costs.

(w) *Original check* means the first paper check drawn on the United States Treasury with respect to a particular payment transaction.

(x) *Payee* means the person that the certifying agency designated to receive payment pursuant to 31 U.S.C. 3528.

(y) *Person* means an individual, institution, including a financial institution, or any other type of entity; the singular includes the plural.

(z) *Presenting bank* means:

(1) A financial institution which, either directly or through a correspondent banking relationship, presents checks to and receives provisional credit from a Federal Reserve Bank; or

(2) A depositary which is authorized to charge checks directly to Treasury's General Account and present them to Treasury for payment through a designated Federal Reserve Bank.

(aa) *Provisional credit* means the initial credit provided to a presenting bank by a Federal Reserve Bank. Provisional credit may be reversed by Treasury until the completion of first examination or final payment is deemed made pursuant to § 240.6(d).

(bb) *Reasonable efforts* means, at a minimum, verifying the existence of the Treasury watermark on an original check. Based upon the facts at hand, including whether a check is an original check, a substitute check or an electronic check, reasonable efforts may require the verification of other security features.

(cc) *Reclamation* means a demand for the amount of a check for which Treasury has requested an immediate refund.

(dd) *Reclamation date* means the date on which a reclamation is issued by Treasury. Normally, demands are sent to presenting banks or other indorsers within two business days of the reclamation date.

(ee) *Reclamation debt* means the amount owed as a result of Treasury's demand for refund of a check payment, and includes interest, penalties and administrative costs assessed in accordance with § 240.8.

(ff) *Reclamation debtor* means a presenting bank or other indorser of a check from whom Treasury has demanded a refund in accordance with §§ 240.8 and 240.9. The reclamation debtor does not include a presenting bank or other indorser who may be liable for a reclamation debt, but from which Treasury has not demanded a refund.

(gg) *Recurring benefit payment* includes but is not limited to a payment of money for any Federal Government entitlement program or annuity.

(hh) *Substitute check* means a paper reproduction of a check drawn on the United States Treasury that meets the definitional requirements set forth at 12 CFR 229.2(aaa).

(ii) *Treasury* means the United States Department of the Treasury, or when authorized, an agent designated by the Secretary of the Treasury or his delegee.

(jj) *Treasury Check Offset* means the collection of an amount owed by a presenting bank in accordance with 31 U.S.C. 3712(e).

(kk) *Truncate* means to remove a paper check from the forward collection or return process and send to a recipient, in lieu of such paper check, a substitute check or an electronic check.

(ll) *U.S. securities* means securities of the United States and securities of Federal agencies and Government corporations for which Treasury acts as the transfer agent.

(mm) *Writing* includes electronic communications when specifically authorized by Treasury in implementing instructions.

§ 240.3 Electronic checks and substitute checks.

(a) *Legal equivalence of electronic checks.* An electronic check for which a presenting bank has provided the guarantees described in § 240.4 is the legal equivalent of an original or substitute check for purposes of this part if the electronic check accurately represents all of the information on the front and back of the check that the presenting bank truncated. If a financial institution presents an electronic check for payment and the check is subject to return, Treasury may effect the return using an electronic check, but this part does not create any right for the presenting bank to return the check to the payee or any other person using an electronic check.

(b) *Safekeeping of original checks.* Any financial institution that creates a substitute check or electronic check shall prevent unauthorized access to the original or substitute check that was truncated by storing the check, until it is destroyed, in a manner consistent with federal banking agency guidelines for safeguarding customer information.

§ 240.4 Presentment guarantees.

The guarantors of a check presented to the Treasury for payment are deemed to guarantee to the Treasury all of the following:

(a) *Indorsements.* That all prior indorsements are genuine, whether or not an express guarantee is placed on the check. When the first indorsement has been made by one other than the payee personally, the presenting bank and the indorsers are deemed to guarantee to the Treasury, in addition to other guarantees, that the person who so indorsed had unqualified capacity and authority to indorse the check on behalf of the payee.

(b) *Alterations.* That the check has not been materially altered.

(c) *Drawer's signature.* That the guarantors have no knowledge that the signature of the drawer is forged or unauthorized.

(d) *Authenticity.* That the guarantors have made all reasonable efforts to ensure that a check is an authentic Treasury check, not a counterfeit check.

(e) *Electronic check.* If the check is an electronic check, that—

(1) The check accurately represents all of the information on the front and back of the original or substitute check that was truncated and meets the technical requirements for sending electronic items to a Federal Reserve Bank as set forth in the Federal Reserve Banks' operating circulars;

(2) Treasury will not receive presentment of, or otherwise be charged for, the electronic check, the original check, or a substitute check (or a paper or electronic reproduction of any of the foregoing) such that Treasury will be asked to make payment based on a check it already has paid; and

(3) Treasury's receipt of the electronic check instead of the original or substitute check will not result in the loss of Treasury's ability to determine whether the check contains a material defect or alteration.

(f) *Substitute check.* If the check is a substitute check, that the guarantors make the warranties set forth at 12 CFR 229.52(a)(1) and (2) and the indemnity set forth at 12 CFR 229.53.

§ 240.5 Limitations on payment; cancellation and distribution of proceeds of checks.

(a) *Limitations on payment.*

(1) Treasury shall not be required to pay any check that is not negotiated to a financial institution within 12 months after the date on which the check was issued.

(2) All checks shall bear a legend, stating ''Void After One Year.'' The legend is notice to payees and indorsers of a general limitation on the payment of checks. The legend, or the inadvertent lack thereof, does not limit, or otherwise affect, the rights of Treasury under the law.

(b) *Cancellation and distribution of proceeds of checks.*

(1) Any check that has not been paid and remains outstanding for more than 12 months after the issue date will be canceled by Treasury.

(2) The proceeds from checks canceled pursuant to paragraph (b)(1) of this section will be returned to the payment certifying or authorizing agency for ultimate credit to the appropriation or fund account initially charged for the payment.

(3) On a monthly basis, Treasury will provide to each agency that authorizes the issuance of checks a list of those checks issued for such agency which were canceled during the preceding month pursuant to paragraph (b)(1) of this section.

§ 240.6 Provisional credit; first examination; declination; final payment.

(a) Any credit issued by a Federal Reserve Bank to a financial institution shall be a provisional credit until Treasury completes first examination of the check, or as provided in paragraph (d) of this section.

(b) Treasury shall have the right as a drawee to complete first examination of checks presented for payment, to reconcile checks, and, when appropriate, to make a declination on any check.

(c) Treasury will decline payment on a check when first examination by Treasury establishes that:

(1) The check has a material defect or alteration;

(2) The check bears a forged or unauthorized drawer's signature;

(3) Treasury has already received presentment of, and made payment on, a substitute check, electronic check or original check relating to the check being presented, such that Treasury is being requested to make payment on a check it has already paid;

(4) In the case of an electronic check, Treasury cannot determine whether the check contains a material defect or alteration without examining the original check or a better quality image of the check and Treasury is on notice of a question of law or fact about whether the check is properly payable; or

(5) In the case of a substitute check, Treasury has a warranty or indemnity claim arising under 12 CFR 229.52 or 229.53.

(d) Treasury shall have a reasonable amount of time to complete first examination. However, except as provided in paragraph (e) of this section, if Treasury has not declined payment on a check within 60 days after the check is presented to a Federal Reserve Processing Center for payment, Treasury will be deemed to have made final payment on the check.

(e) Notwithstanding the provisions of paragraph (d) of this section, in accordance with 31 U.S.C. 3328(a)(2), if, upon presentment for payment, Treasury is on notice of a question of law or fact about whether a check is properly payable, Treasury may defer final payment until the question is settled.

(f) If a Federal Reserve Bank debits a financial institution's reserve account as a result of an erroneous declination,

Treasury will promptly refund the amount of the payment.

§ 240.7 Declination protest.

(a) *Who may protest.* Only a presenting bank may protest the declination of a check that it has presented to a Federal Reserve Bank for payment.

(b) *Basis for protest.* Where Treasury, in accordance with § 240.6, has made a declination of a check presented for payment and a Federal Reserve Bank has reversed its provisional credit to the presenting bank, the presenting bank may file a protest challenging the factual basis for such declination. Protests may be filed challenging the following determinations:

(1) *Counterfeit checks.* The presenting bank may offer evidence that the check is not a counterfeit.

(2) *Altered checks.* The presenting bank may offer evidence that the check is not altered.

(3) *Checks bearing forged or unauthorized drawer's signatures.* The presenting bank may offer evidence that the drawer's signature was authentic or was authorized.

(4) *Checks bearing a forged or unauthorized indorsement.* The presenting bank may offer evidence that an indorsement on the back of the check was not forged or was otherwise authorized in accordance with the requirements of §§ 240.13 through 240.17.

(5) *Prior presentment.* The presenting bank may offer evidence that the check or a paper or electronic representation thereof has not already been presented to, and paid by, Treasury.

(6) *Adequacy of substitute check or electronic check.* The presenting bank may offer an original check or a copy of the check that is sufficient to support a determination that the check does not contain a material defect or alteration.

(c) *Procedures for filing a protest.* A declination protest must be in writing, and must be sent to: Department of the Treasury, Financial Management Service, Branch Manager, Financial Processing Division, Check Reconciliation Branch, Room 700–A, 3700 East-West Highway, Hyattsville, MD 20782, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at *http://www.fms.treas.gov.* Treasury will not consider any protest unless it is received within 90 days from the declination date.

(d) *Review of a declination protest.* The Director, Financial Processing Division, or an authorized designee, will make every effort to decide any protest properly submitted under this section within 60 days, and will notify the presenting bank of Treasury's decision. In those cases where it is not possible to render a decision within 60 days, the Director, Financial Processing Division, or an authorized designee, will notify the presenting bank of the delay. Neither the Director, Financial Processing Division, nor an authorized designee, will have any involvement in the decision to deny payment of a check under § 240.6 of this part.

(1) If, based on the evidence provided, the Director of the Financial Processing Division, or an authorized designee, finds that the presenting bank has met, by a preponderance of the evidence, the criteria in paragraph (b) of this section, Treasury will reverse its decision to decline payment on the check by directing a Federal Reserve Bank to provide credit in the amount of the check to the presenting bank.

(2) If, based on the evidence provided, the Director of the Financial Processing Division, or an authorized designee, finds that the presenting bank has failed to meet, by a preponderance of the evidence, the criteria in paragraph (b) of this section, the declination will not be reversed.

§ 240.8 Reclamation of amounts of paid checks.

(a) If, after making final payment in accordance with § 240.6, Treasury determines that any guarantor has breached a presentment guarantee listed in § 240.4, the guarantor shall be liable to Treasury for the full amount of the check payment. Treasury may reclaim the amount of the check payment from any such guarantor prior to:

(1) The end of the 1-year period beginning on the date that a check is processed for payment by a Federal Reserve Processing Center; or

(2) The expiration of the 180-day period beginning on the close of the period described in paragraph (a)(1) of this section if a timely claim under 31 U.S.C. 3702 is presented to the certifying agency.

(b) Treasury will not reclaim on a check that bears a forged or unauthorized drawer's signature unless it has evidence that the reclamation debtor had knowledge of the forged or unauthorized drawer's signature.

(c) Treasury will not reclaim on a counterfeit check unless the reclamation debtor has failed to make all reasonable efforts to ensure that a check is an authentic check and not a counterfeit check. Guidance on the key security features found on U.S. Treasury checks is available on the FMS website at: *http://www.fms.treas.gov/checkclaims/check_security_new.pdf.* Institutions may contact the FMS Questioned Documents Branch at (202) 874–7640 for additional information about these security features or to request training.

(d) Reclamation debts are due to be paid upon receipt of the reclamation by the reclamation debtor. Interest, penalties, and administrative costs associated with unpaid balances will accrue as follows:

(1) *Interest.* Treasury will assess interest on the unpaid principal of the reclamation debt beginning on the 61st day following the reclamation date, and will calculate interest based on the rate published annually by Treasury in accordance with 31 U.S.C. 3717. Interest will continue to accrue until the full amount of the reclamation is paid or Treasury determines that payment is not required.

(2) *Penalties.* Treasury will assess a penalty beginning on the 91st day following the reclamation date. The penalty will be assessed in accordance with 31 U.S.C. 3717 on the unpaid principal of the reclamation debt, and will continue to accrue until the full amount of the reclamation debt is paid or Treasury determines that payment is not required.

(3) *Administrative costs.* Treasury will assess administrative costs associated with the unpaid reclamation debt beginning on the 61st day following the reclamation date. Administrative costs will continue to accrue until the full amount of the reclamation debt is paid or Treasury determines that payment is not required.

(e) If Treasury is unable to fully collect a reclamation debt from a reclamation debtor, after pursuing all appropriate means of collection (including, but not limited to, administrative offset in accordance with § 240.10 and Treasury Check Offset in accordance with § 240.11), Treasury will discharge the unpaid reclamation debt. See 31 CFR 903.5 (Discharge of indebtedness; reporting requirements). Treasury or the certifying agency will report the amount of the unpaid reclamation debt to the Internal Revenue Service in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P–1.

§ 240.9 Reclamation procedures; reclamation protests.

(a) *Reclamation procedures.* (1) Treasury will send a ''REQUEST FOR REFUND (CHECK RECLAMATION)'' to the reclamation debtor in accordance with § 240.8(a). This request will advise the reclamation debtor of the amount demanded and the reason for the demand. Treasury will make follow-up demands by sending at least three

monthly statements to the reclamation debtor. Monthly statements will identify any unpaid reclamation debts (as defined at § 240.2) and will contain or be accompanied by notice to the reclamation debtor that:

(i) If the reclamation debt is not paid within 120 days of the reclamation date, Treasury intends to collect the debt through administrative offset in accordance with § 240.10;

(ii) If the administrative offset is unsuccessful, Treasury intends to collect the debt through Treasury Check Offset in accordance with § 240.11;

(iii) The reclamation debtor has an opportunity to inspect and copy Treasury's records with respect to the reclamation debt;

(iv) The reclamation debtor may, by filing a protest in accordance with § 240.9(b), request Treasury to review its decision that the reclamation debtor is liable for the reclamation debt; and

(v) The reclamation debtor has an opportunity to enter into a written agreement with Treasury for the repayment of the reclamation debt. A request for a repayment agreement must be accompanied by documentary proof that satisfies Treasury that the reclamation debtor is unable to repay the entire amount owed when due.

(2) Requests by a reclamation debtor for an appointment to inspect and copy Treasury's records with respect to a reclamation debt and requests to enter into repayment agreements must be sent in writing to: Department of the Treasury, Financial Management Service, Financial Processing Division, Reclamation Branch, Room 700D, PO Box 1849, Hyattsville, MD 20788, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at *http://www.fms.treas.gov.*

(3) If a reclamation debt remains unpaid for 90 days after the reclamation date and if there is no unresolved protest associated with the reclamation debt, the monthly statement will be annotated with a notice that the reclamation debtor has until the next billing date to make payment on the reclamation debt or Treasury will proceed to collect the reclamation debt through offset in accordance with § 240.10 and Treasury Check Offset in accordance with § 240.11.

(4) If Treasury determines that a reclamation has been made in error, Treasury will abandon the reclamation. If Treasury already has collected the amount of the reclamation from the reclamation debtor, Treasury will promptly refund to the reclamation debtor the amount of its payment. Treasury may refund the amount either by applying the amount to another reclamation debt owed by the reclamation debtor in accordance with this Part or other applicable law, or by returning the amount to the reclamation debtor.

(b) *Reclamation protests.* (1) *Who may protest.* Only a reclamation debtor may protest a reclamation.

(2) *Basis for protest.* Where Treasury, in accordance with § 240.8 and paragraph (a) of this section, reclaims the amount of a check payment, the reclamation debtor may file a protest challenging such reclamation. Protests may be filed challenging the following determinations:

(i) *Counterfeit checks.* The reclamation debtor may offer evidence that it made all reasonable efforts to ensure that a check is authentic. The reclamation debtor must include evidence that the check was examined for a watermark as required under §§ 240.2(bb) and 240.4. Depending on the circumstances, FMS may require evidence that the reclamation debtor also examined the check for evidence of additional security features as described in guidance provided by Treasury or on Treasury's behalf.

(ii) *Altered checks.* The reclamation debtor may offer evidence that the check is not altered.

(iii) *Checks bearing forged or unauthorized drawer's signatures.* The reclamation debtor may offer evidence that the reclamation debtor did not have knowledge of the forged or unauthorized drawer's signature.

(iv) *Checks bearing a forged or unauthorized indorsement.* The reclamation debtor may offer evidence that the indorsement was not forged or was otherwise authorized in accordance with the requirements of §§ 240.13 through 240.17.

(v) *Prior presentment.* The presenting bank may offer evidence that the check or a paper or electronic representation thereof has not already been presented to, and paid by, Treasury.

(vi) *Adequacy of substitute check or electronic check.* The presenting bank may offer an original check or a copy of the check that is sufficient to support a determination that the check does not contain a material defect or alteration.

(3) *Procedures for filing a protest.* A reclamation protest must be in writing, and must be sent to: Department of the Treasury, Financial Management Service, Financial Processing Division, Reclamation Branch, Room 700D, P.O. Box 1849, Hyattsville, MD 20788, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at *http://www.fms.treas.gov.*

(i) The reclamation protest must include supporting documentation (including, but not limited to, affidavits, account agreements, and signature cards) for the purpose of establishing that the reclamation debtor is not liable for the reclamation debt.

(ii) Treasury will not consider reclamation protests received more than 90 days after the reclamation date.

(iii) Treasury may, at its discretion, consider information received from a guarantor other than the reclamation debtor. However, in so doing, Treasury does not waive any of its rights under this part, nor does Treasury grant rights to any guarantor that are not otherwise provided in this part.

(4) *Review of a reclamation protest.* The Director, Financial Processing Division, or an authorized designee, will make every effort to decide any protest properly submitted under this section within 60 days, and will notify the reclamation debtor of Treasury's decision. In those cases where it is not possible to render a decision within 60 days, the Director, Financial Processing Division, or an authorized designee, will notify the reclamation debtor of the delay. Neither the Director, Financial Processing Division, nor an authorized designee, will have any involvement in the process of making determinations under § 240.8(a) of this part or sending a ''REQUEST FOR REFUND (CHECK RECLAMATION)'' under § 240.9(a) of this part.

(i) Treasury will refrain from the collection activities identified in §§ 240.10 and 240.11 while a timely protest is being considered. However, interest, penalties, and administrative costs will continue to accrue and will be added to the reclamation debt until a final determination on the protest has been made.

(ii) If, based on the evidence provided, the Director of the Financial Processing Division, or an authorized designee, finds that the reclamation debtor has met, by a preponderance of the evidence, the criteria in paragraph (b)(2) of this section, Treasury will notify the reclamation debtor, in writing, of his or her decision to terminate collection and will refund any amounts previously collected for the reclamation debt. Treasury may refund the amount either by applying the amount to another reclamation debt owed by the reclamation debtor in accordance with this Part or other applicable law, or by returning the amount to the reclamation debtor.

(iii) If the Director, Financial Processing Division, or an authorized designee, finds, by a preponderance of the evidence, that the reclamation

debtor is liable for the reclamation debt, Treasury will notify the reclamation debtor, in writing, of his or her decision. If the reclamation debtor has not paid the reclamation in full, the reclamation debtor must pay any outstanding amounts in full within 30 days from the date of Treasury's decision. If the reclamation debtor fails to pay the reclamation debt in full within that time frame, Treasury will proceed to collect the reclamation debt through offset in accordance with §§ 240.10 and 240.11.

(5) *Effect of protest decision.* The notice provided to the reclamation debtor under paragraph (b)(4)(iii) of this section shall serve as the final agency determination under the Administrative Procedure Act (5 U.S.C. 701, *et seq.*). No civil suit may be filed until the reclamation debtor has filed a protest under this section, and Treasury has provided notice of its final determination.

§ 240.10 Offset.

(a) If a reclamation debt remains unpaid for 120 days after the reclamation date, Treasury will refer the reclamation debt, if eligible, to Treasury's centralized offset program (see 31 CFR part 285) or another Federal agency for offset in accordance with 31 U.S.C. 3716. Prior to making a referral for offset, Treasury, in accordance with § 240.9(a)(3), will send at least one monthly statement to the reclamation debtor informing the reclamation debtor that Treasury intends to collect the reclamation debt by administrative offset and Treasury Check Offset.

(b) If a reclamation debtor wishes to make payment on a reclamation debt referred for offset, the reclamation debtor should contact Treasury at the address listed in § 240.9(b) to resolve the debt and avoid offset.

(c) If Treasury is unable to collect a reclamation debt by use of the offset described in paragraph (a) of this section, Treasury shall take such action against the reclamation debtor as may be necessary to protect the interests of the United States, including, but not limited to, Treasury Check Offset in accordance with § 240.11, or referral to the Department of Justice.

(d) If Treasury effects offset under this section and it is later determined that the reclamation debtor already had paid the amount of the reclamation debt, or that a reclamation debtor which had timely filed a protest was not liable for the amount of the reclamation, Treasury will promptly refund to the reclamation debtor the amount of its payment. Treasury may refund the amount either by applying the amount to another reclamation debt owed by the reclamation debtor in accordance with this Part or other applicable law, or by returning the amount to the reclamation debtor.

§ 240.11 Treasury Check Offset.

(a) If Treasury is unable to effect collection pursuant to §§ 240.8, 240.9, or 240.10, of this part, Treasury will collect the amount of the reclamation debt through Treasury Check Offset. Treasury Check Offset occurs when, at the direction of the Treasury, a Federal Reserve Bank withholds, that is, offsets, credit from a presenting bank. The amount of credit offset is applied to the reclamation debt owed by the presenting bank. By presenting Treasury checks for payment, the presenting bank is deemed to authorize Treasury Check Offset.

(b) If Treasury effects offset under this section and it is later determined that the presenting bank paid the reclamation debt in full, or that a presenting bank was not liable for the amount of the reclamation debt, Treasury will promptly refund to the presenting bank the amount of its overpayment. Treasury may refund the amount either by applying the amount to another reclamation debt in accordance with this part or other applicable law, or by returning the amount to the presenting bank.

(c) Treasury Check Offset is used for the purpose of collecting debt owed by a presenting bank to the Federal Government. As a consequence, presenting banks shall not be able to use the fact that Treasury checks have not been paid as the basis for a claim against Treasury, a Federal Reserve Bank, or other persons or entities, including payees or other indorsers of checks, for the amount of the credit offset pursuant to 31 U.S.C. 3712(e) and this section.

(d) This section does not apply to a claim based upon a reclamation that has been outstanding for more than 10 years from the date of delinquency.

§ 240.12 Processing of checks.

(a) Federal Reserve Banks. (1) Federal Reserve Banks must cash checks for Government disbursing officials when such checks are drawn by the disbursing officials to their own order, except that payment of such checks must be refused if:

(i) A check bears a material defect or alteration;

(ii) A check was issued more than one year prior to the date of presentment; or

(iii) The Federal Reserve Bank has been notified by Treasury, in accordance with § 240.15(c), that a check was issued to a deceased payee.

(2) Federal Reserve Banks are not required to cash checks presented directly to them by the general public.

(3) As a depositary of public funds, each Federal Reserve Bank shall:

(i) Receive checks from its member banks, nonmember clearing banks, or other depositors, when indorsed by such banks or depositors who guarantee all prior indorsements thereon;

(ii) Give immediate provisional credit therefore in accordance with their current Time Schedules and charge the amount of the checks cashed or otherwise received to the General Account of the United States Treasury, subject to first examination and payment by Treasury;

(iii) Forward payment records and requested checks to Treasury; and

(iv) Release the original checks and substitute checks to a designated Regional Records Services Facility upon notification from Treasury.

(4) If a check is to be declined under § 240.6, Treasury will provide the Federal Reserve Bank with notice of declination upon the completion of first examination. Federal Reserve Banks must give immediate credit therefor to Treasury's General Account, thereby reversing the previous charge to the General Account for such check.

(5) Treasury authorizes each Federal Reserve Bank to release a copy of the check to the presenting bank when payment is declined.

(b) *Treasury General Account (TGA) designated depositaries outside the United States.* (1) Financial institutions outside the United States designated by Treasury as depositaries of public money in accordance with 31 U.S.C. 3303 and permitted to charge checks to the General Account of the United States Treasury in accordance with Treasury implementing instructions shall be governed by the operating instructions contained in the letter of authorization to them from Treasury and are, as presenting banks, subject to the provisions of §§ 240.4, 240.8, and 240.9.

(2) If a check is to be declined under § 240.6, Treasury will provide the presenting bank with notice of declination upon the completion of first examination and will provide the presenting bank with a copy or image of the check. Such presenting bank must give immediate credit therefore to the General Account of the United States Treasury, thereby reversing the previous charge to the Account for such check. Treasury authorizes the designated Federal Reserve Bank to return to such presenting bank the original check when payment is declined in accordance with § 240.5(a) or § 240.15(c).

(3) To ensure complete recovery of the amount due, reclamation refunds require payment in United States dollars with checks drawn on or payable through United States financial institutions located in the United States. Reclamation refunds initiated by financial institutions outside of the United States must be sent through their headquarters or U.S. correspondent financial institution only. The payments should be accompanied by documentation identifying the check that was the subject of the reclamation (such as a copy of the reclamation notice or the current monthly statement). Reclamation refunds shall not be deposited to Treasury's General Account.

(4) Additional information relating to designated depositaries outside the United States may be found in Volume VI, Chapter 2000, of the Treasury Financial Manual, which can be found at *http://www.fms.treas.gov.*

Indorsement of Checks

§ 240.13 Indorsement by payees.

(a) *General requirements.* Checks shall be indorsed by the named payee or by another on behalf of such named payee as set forth in this part.

(b) *Acceptable indorsements.* (1) A check is properly indorsed when:

(i) The check is indorsed by the payee in a form recognized by general principles of law and commercial usage for negotiation, transfer or collection of negotiable instruments.

(ii) The check is indorsed by another on behalf of the named payee, and sufficiently indicates that the indorser has indorsed the check on behalf of the payee pursuant to authority expressly conferred by or under law or other regulation. An example would be: ''John Jones by Mary Jones.'' This example states the minimum indication acceptable. However, §§ 240.14, 240.15, and 240.17(f) specify the addition of an indication in specified situations of the actual capacity in which the person other than the named payee is indorsing.

(iii) Absent a signature, the check is indorsed ''for collection'' or ''for deposit only to the credit of the within named payee or payees.'' The presenting bank shall be deemed to guarantee good title to checks without signatures to all subsequent indorsers and to Treasury.

(iv) The check is indorsed by a financial institution under the payee's authorization.

(2) *Indorsement of checks by a duly authorized fiduciary or representative.* The individual or institution accepting a check from a person other than the named payee is responsible for determining whether such person is authorized and has the capacity to indorse and negotiate the check. Evidence of the basis for such a determination may be required by Treasury in the event of a dispute.

(3) *Indorsement of checks by a financial institution under the payee's authorization.* When a check is credited by a financial institution to the payee's account under the payee's authorization, the financial institution may use an indorsement substantially as follows: ''Credit to the account of the within-named payee in accordance with the payee's instructions. XYZ [Name of financial institution].'' A financial institution using this form of indorsement will be deemed to guarantee to all subsequent indorsers and to the Treasury that it is acting as an attorney-in-fact for the payee, under the payee's authorization, and that this authority is currently in force and has neither lapsed nor been revoked either in fact or by the death or incapacity of the payee.

(4) *Indorsement of checks drawn in favor of financial institutions.* All checks drawn in favor of a financial institution, for credit to the account of a person designating payment so to be made, must be indorsed in the name of the financial institution as payee in the usual manner. However, no check drawn in favor of a financial institution for credit to the account of a payee may be negotiated by the financial institution after the death of the payee.

(c) *Unacceptable indorsements.* (1) A check is not properly indorsed when the check is signed or otherwise is indorsed by a person without the payee's consent or authorization.

(2) Failure to include the signature of the person signing the check as required by paragraph (b)(1)(ii) of this section will create a rebuttable presumption that the indorsement is a forgery and is unacceptable.

(3) Failure to include sufficient indication of the indorser's authority to act on behalf of the payee as required by paragraph (b)(1)(ii) of this section will create a rebuttable presumption that the indorsing person is not authorized to indorse a check for the payee.

§ 240.14 Checks issued to incompetent payees.

(a) *Handling of checks when a guardian or other fiduciary has been appointed.* (1) A guardian appointed in accordance with applicable State law, or a fiduciary appointed in accordance with other applicable law, may indorse checks issued for the following classes of payments the right to which under law does not terminate with the death of the payee: payments for the redemption of currencies or for principal and/or interest on U.S. securities; payments for tax refunds; and payments for goods and services.

(i) A guardian or other fiduciary indorsing any such check on behalf of an incompetent payee, must include, as part of the indorsement, an indication of the capacity in which the guardian or fiduciary is indorsing. An example would be: ''John Jones by Mary Jones, guardian of John Jones.''

(ii) When a check indorsed in this fashion is presented for payment by a financial institution, it will be paid by Treasury without submission of documentary proof of the authority of the guardian or other fiduciary, with the understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(2) A guardian or other fiduciary may not indorse a check issued for any class of payment other than one specified in paragraph (a)(1) of this section. When a check other than one specified in paragraph (a)(1) of this section is received by a guardian or other fiduciary, the check must be returned to the certifying agency with information as to the incompetence of the payee and documentary evidence showing the appointment of the guardian or other fiduciary in order that a replacement check, and future checks, may be drawn in favor of the guardian or other fiduciary.

(b) *Handling of checks when a guardian or other fiduciary has not been appointed.* If a guardian or other fiduciary has not been appointed, all checks issued to an incompetent payee must be returned to the certifying agency for determination as to whether, under applicable law, payment is due and to whom it may be made.

(c) *Handling of certain checks by an attorney-in-fact.* Notwithstanding paragraph (a)(2) of this section, if a check was issued for a class of payments the right to which under law terminates upon the death of the beneficiary, such as a recurring benefit payment or annuity, the check may be negotiated under a durable special power of attorney or springing durable special power of attorney subject to the restrictions enumerated in § 240.17. After the end of the six-month period provided in §§ 240.17(d) and (e), such checks must be handled in accordance with paragraph (a)(2) of this section.

§ 240.15 Checks issued to deceased payees.

(a) *Handling of checks when an executor or administrator has been appointed.*

(1) An executor or administrator of an estate that has been appointed in accordance with applicable State law may indorse checks issued for the following classes of payments the right to which under law does not terminate with the death of the payee: payments for the redemption of currencies or for principal and/or interest on U.S. securities; payments for tax refunds; and payments for goods and services.

(i) An executor or administrator indorsing any such check must include, as part of the indorsement, an indication of the capacity in which the executor or administrator is indorsing. An example would be: ''John Jones by Mary Jones, executor of the estate of John Jones.''

(ii) When a check indorsed in this fashion is presented for payment by a financial institution, it will be paid by Treasury without the submission of documentary proof of the authority of the executor or administrator, with the understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(2) An executor or administrator of an estate may not indorse a check issued for any class of payment other than one specified in paragraph (a)(1) of this section. Other checks, such as recurring benefit payments and annuity payments, may not be negotiated after the death of the payee. Such checks must be returned to the certifying agency for determination as to whether, under applicable law, payment is due and to whom it may be made.

(b) *Handling of checks when an executor or administrator has not been appointed.* If an executor or administrator has not been appointed, all checks issued to a deceased payee must be returned to the certifying agency for determination as to whether, under applicable law, payment is due and to whom it may be made.

(c) *Handling of checks when a certifying agency learns, after the issuance of a recurring benefit payment check, that the payee died prior to the date of issuance.* (1) A recurring benefit payment check, issued after a payee's death, is not payable. As a consequence, when a certifying agency learns that a payee has died, the certifying agency must give immediate notice to Treasury, as prescribed at Volume I, Part 4, Chapter 7000 of the Treasury Financial Manual, which can be found at *http://www.fms.treas.gov*. Upon receipt of such notice from a certifying agency, Treasury will instruct the Federal Reserve Bank to refuse payment of the check upon presentment. Upon receipt of such instruction from Treasury, the Federal Reserve Bank will make every appropriate effort to intercept the check. If the check is successfully intercepted, the Federal Reserve Bank will refuse payment, and will return the check unpaid to the presenting bank with an annotation that the payee is deceased. If a financial institution learns that a date of death triggering action under this section is erroneous, the financial institution must advise the payee to contact the payment certifying agency.

(2) Nothing in this section shall limit the right of Treasury to institute reclamation proceedings under the provisions of §§ 240.8 and 240.9 with respect to a check issued to a deceased payee that has been negotiated and paid over a forged or unauthorized indorsement.

§ 240.16 Checks issued to minor payees.

(a) Checks in payment of principal and/or interest on U.S. securities that are issued to minors may be indorsed by:

(1) Either parent with whom the minor resides; or

(2) If the minor does not reside with either parent, by the person who furnishes the minor's chief support.

(b) The parent or other person indorsing on behalf of the minor must present with the check the indorser's signed statement giving the minor's age, and stating that the payee either resides with the parent or receives his or her chief support from the person indorsing on the minor's behalf and that the proceeds of the check will be used for the minor's benefit.

§ 240.17 Powers of attorney.

(a) *Specific powers of attorney.* Any check may be negotiated under a specific power of attorney executed in accordance with applicable State or Federal law after the issuance of the check and describing the check in full (check serial and symbol numbers, date of issue, amount, and name of payee).

(b) *General powers of attorney.* Checks may be negotiated under a general power of attorney executed, in accordance with applicable State or Federal law, in favor of a person for the following classes of payments:

(1) Payments for the redemption of currencies or for principal and/or interest on U.S. securities;

(2) Payments for tax refunds, but subject to the limitations concerning the mailing of Internal Revenue refund checks contained in 26 CFR 601.506(c); and

(3) Payments for goods and services.

(c) *Special powers of attorney.* Checks issued for classes of payments other than those specified in paragraph (b) of this section, such as a recurring benefit payment, may be negotiated under a special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the special power of attorney is not given to carry into effect an assignment of the right to receive such payment, either to the attorney-in-fact or to any other person.

(d) *Durable special powers of attorney.* A durable special power of attorney is a special power of attorney that continues despite the principal's later incompetency, and is created by the principal's use of words explicitly stating such intent. Classes of checks other than those specified in paragraph (b) of this section may be negotiated under a durable special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the special power of attorney is not given to carry into effect an assignment of the right to receive such payment, either to the attorney-in-fact or to any other person. For the purpose of negotiating Treasury checks, durable special powers of attorney are effective only during the six-month period following a determination that the named payee is incompetent.

(e) *Springing durable special powers of attorney.* A springing durable special power of attorney is similar to a durable power of attorney except that its terms do not become effective until the principal's subsequent incompetence. As with a durable special power of attorney, a springing durable special power of attorney is created by the principal's use of language explicitly stating that its terms become effective at such time as the principal is determined to be incompetent. Classes of checks other than those specified in paragraph (b) of this section may be negotiated under a springing durable special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the springing durable special power of attorney is not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to any other person. For the purpose of negotiating Treasury checks, springing durable special powers of attorney are

effective only during the six-month period following a determination that the named payee is incompetent.

(f) *Proof of authority.* Checks indorsed by an attorney-in-fact must include, as part of the indorsement, an indication of the capacity in which the attorney-in-fact is indorsing. An example would be: ''John Jones by Paul Smith, attorney-in-fact for John Jones.'' Such checks when presented for payment by a financial institution, will be paid by Treasury without the submission of documentary proof of the claimed authority, with the understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(g) *Revocation of powers of attorney.* Notwithstanding any other law, for purposes of negotiating Treasury checks, all powers of attorney are deemed revoked by the death of the principal and may also be deemed revoked by notice from the principal to the parties known, or reasonably expected, to be acting on the power of attorney.

(h) *Optional use forms.* Optional use power of attorney forms are listed in the appendix to this part. These forms are available on the FMS website at: *http://www.fms.treas.gov/ checkclaims/ regulations.html*.

§ 240.18 Lack of authority to shift liability.

(a) This part neither authorizes nor directs a financial institution to debit the account of any person or to deposit any funds from any account into a suspense account or escrow account or the equivalent. Nothing in this part shall be construed to affect a financial institution's contract with its depositor(s) under authority of state law.

(b) A financial institution's liability under this part is not affected by any action taken by it to recover from any person the amount of the financial institution's liability to the Treasury.

§ 240.19 Reservation of rights.

The Secretary of the Treasury reserves the right, in the Secretary's discretion, to waive any provision(s) of this regulation not otherwise required by law.

Appendix A to Part 240—Optional Forms for Powers of Attorney and Their Application

FMS Form 231—General Power of Attorney (Individual). This general power of attorney form may be executed by an individual, unincorporated partnership, or sole owner, for checks drawn on the United States Treasury, in payment: (1) For redemption of currencies or for principal or interest on U.S. securities; (2) for tax refunds; and (3) for goods and services.

FMS Form 232—Specific Power of Attorney (Individual). This specific power of attorney form may be executed by an individual, unincorporated partnership, or sole owner to authorize the indorsement of any class of check drawn on the United States Treasury. To be valid, the form must be executed after the issuance of the check and must describe the check in full, including the check serial and symbol numbers, date of issue, amount, and name of the payee.

FMS Form 233—Special Power of Attorney (Individual). This special power of attorney form may be executed by an individual, unincorporated partnership, or sole owner, to authorize the indorsement of payments other than those listed under FMS Form 231, such as recurring benefit payments. It may name any person (as the term person is defined in 31 CFR part 240) as attorney-in-fact, but must describe the purpose for which the checks are issued and recite that it is not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to any other person. A special power of attorney is not effective for purposes of negotiating checks issued after the payee is determined to be incompetent, unless the payee has indicated that the special power of attorney is to: (1) Remain effective following a determination that the principal is incompetent (a durable special power of attorney); or (2) become effective following a determination that the principal is incompetent (a springing durable special power of attorney). In no instance may a special power of attorney be used as the basis for negotiation of a check drawn on the United States Treasury more than six months after a determination that the principal is incompetent.

FMS Form 234—Specific Power of Attorney (Corporation). This general power of attorney form may be executed by a corporation to authorize the indorsement by an attorney-in-fact for the classes of payments listed under FMS Form 231. When authority is given to an officer of the corporation to execute a power of attorney authorizing a third person to indorse and collect checks drawn on the United States Treasury in the name of the corporation, the power of attorney on FMS Form 234 should be accompanied by FMS Form 235 (Resolution by Corporation Conferring Authority Upon an Officer to Execute a Power of Attorney for the Collection of Checks Drawn on the Treasurer of the United States), executed by the officer authorized herein to execute such a power.

FMS Form 236—Specific Power of Attorney (Corporation). This specific power of attorney form may be executed by a corporation to authorize the indorsement by an attorney-in-fact of any class of check drawn on the United States Treasury. To be valid, the form must be executed after the issuance of the check and must describe the check in full, including the check serial and symbol numbers, date of issue, amount, and name of the payee. When authority is given to an officer of the corporation to execute a power of attorney authorizing a third person to indorse and collect checks drawn on the United States Treasury in the name of the corporation, the power of attorney on FMS Form 236 should be accompanied by FMS Form 235 (Resolution by Corporation Conferring Authority Upon an Officer to Execute a Power of Attorney for the Collection of Checks Drawn on the Treasurer of the United States), executed by the officer authorized herein to execute such a power.

Dated: October 12, 2004.

Richard L. Gregg,

Commissioner.

[FR Doc. 04–23279 Filed 10–18–04; 8:45 am]

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Carpinteria and Montecito Water Distribution Systems Conveyance Act of 2004 (Oct. 5, 2004; 118 Stat. 1200)

H.R. 1732/P.L. 108–316

To amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Williamson County, Texas, Water Recycling and Reuse Project, and for other purposes. (Oct. 5, 2004; 118 Stat. 1202)

H.R. 2696/P.L. 108–317

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H.R. 3209/P.L. 108–318

To amend the Reclamation Project Authorization Act of 1972 to clarify the acreage for which the North Loup division is authorized to provide irrigation water under the Missouri River Basin project. (Oct. 5, 2004; 118 Stat. 1211)

H.R. 3249/P.L. 108–319

To extend the term of the Forest Counties Payments Committee. (Oct. 5, 2004; 118 Stat. 1212)

H.R. 3389/P.L. 108–320

To amend the Stevenson-Wydler Technology Innovation Act of 1980 to permit Malcolm Baldrige National Quality Awards to be made to nonprofit organizations. (Oct. 5, 2004; 118 Stat. 1213)

H.R. 3768/P.L. 108–321

Timucuan Ecological and Historic Preserve Boundary Revision Act of 2004 (Oct. 5, 2004; 118 Stat. 1214)

S.J. Res. 41/P.L. 108–322

Commemorating the opening of the National Museum of the American Indian. (Oct. 5, 2004; 118 Stat. 1216)

H.R. 4654/P.L. 108–323

To reauthorize the Tropical Forest Conservation Act of 1998 through fiscal year 2007, and for other purposes. (Oct. 6, 2004; 118 Stat. 1218)

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